

02-03-06

AF/3622 #

FEB 02 2006

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
0110754-629

Re Application Of: Thomas J. Sullivan et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/385,489	August 30, 1999	D. Lastra	24573	3622	9228

Invention: SYSTEM AND METHOD FOR ADMINISTERING PROMOTIONS

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

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- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
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Dated: February 2, 2006

Adam H. Masia
Reg. No. 35,602
Customer No. 24573

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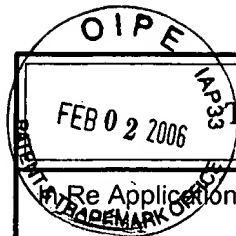
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Thomas J. Sullivan, et al.
Appl. No.: 09/385,489
Conf. No.: 9228
Filed: August 30, 1999
Title: SYSTEM AND METHOD FOR ADMINISTERING PROMOTIONS
Unit: 3622
Examiner: D. Lastra
Docket No.: 0110754-629

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Respectfully submitted,

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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Thomas J. Sullivan, et al.
Appl. No.: 09/385,489
Conf. No.: 9228
Filed: August 30, 1999
Title: SYSTEM AND METHOD FOR ADMINISTERING PROMOTIONS
Art Unit: 3622
Examiner: D. Lastra
Docket No.: 0110754-629

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed on December 2, 2005. This Appeal is taken from the Final Rejection dated September 26, 2005.

02/06/2006 EFLORES 00000027 09385489

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500.00 DP

I. REAL PARTY IN INTEREST

The real party in interest is NCH Marketing Services, Inc., by way of Assignment dated August 30, 1999 and recorded on August 30, 1999, and a change of name dated December 21, 2002 and recorded on February 11, 2002.

II. RELATED APPEALS AND INTERFERENCES

On May 19, 2004, The Board of Patent Appeals and Interferences issued a Decision on Appeal (Appeal No. 2004-0199) on this application ("2004 Board Decision"). Appellants know of no other currently pending related appeals or interferences that will directly affect or be directly affected by or have a bearing on this Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1 to 32, 37 to 83, and 88 to 94 are pending in the application. Attached hereto in the Claims Appendix is a copy of Claims 1 to 32, 37 to 83, and 88 to 94 that are on appeal. Claims 1 to 32, 37 to 83, and 88 to 94 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,832,458 ("Jones") in view of U.S. Patent No. 5,056,019 ("Schultz").

IV. STATUS OF AMENDMENTS

No amendments were filed after the final rejection on September 26, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention provides a method for an independent system operator to administer a trade promotion involving a manufacturer and a retailer (having at least one store with an in-store point-of-sale ("POS") system). The independent system operator is a separate entity from the retailer and the manufacturer. The method enables both the retailer and the manufacturer to trust the independent operator to administer the trade promotion. Another embodiment of the present invention provides an independent system for administering a trade promotion involving a manufacturer and a retailer (having at least one store with an in-store POS system). This system is run by a separate entity independent from the retailer and the manufacturer.

Generally, a trade promotion involves promotion funds the manufacturer pays to the retailer for promoting a designated product and does not involve coupons. A trade promotion often requires a retailer to advertise the promoted product. Manufacturers and retailers generally negotiate or collaborate on the terms of the trade promotions. (See Generally Specification, page 1, lines 14-17, and page 3, lines 8-16).

In a first form of trade promotion, under the agreed upon terms of the trade promotion, the retailer provides a discount on the promoted product to the consumer in the form of a reduced product price for the promoted product. The consumer receives the discount by purchasing the promoted product (or in certain instances by presenting the consumer's frequent shopper card or other identification when purchasing the promoted product). In a second form of the trade promotion, under agreed upon terms of the trade promotion, the retailer promotes the product such as by prominently placing the product at the end of an aisle in the retailer's store. In this form, the retailer may or may not charge the consumer full price for the product. In these first two forms, the manufacturer pays the retailer based on the number of promoted products sold by the retailer during the period of the trade promotion based on the agreed upon terms of the trade promotion (rather than on a number of coupons accepted or submitted by the retailer). The retailer receives a predetermined payment value or fee from the manufacturer for each promoted product sold by the retailer during the period of the trade promotion. In a third form, the manufacturer pays the retailer a flat predetermined

payment value or fee for conducting the trade promotion. The number of promoted products sold by the retailer during the period of the trade promotion is provided to the manufacturer as evidence that the retailer conducted the trade promotion according to the contract terms of the trade promotion. In a fourth form of trade promotion, the manufacturer pays the retailer a combination of (i) a predetermined payment value for conducting the entire trade promotion, and (ii) a predetermined payment value for each of the promoted products sold during the trade promotion. In trade promotions, the manufacturers do not have to facilitate the printing, distribution, or processing of coupons. In trade promotions, the consumers do not have to obtain, carry, present, or otherwise handle or use coupons. In trade promotions, the retailers do not have to accept, verify, or process coupons. (See Generally Specification, page 2, lines 14-23, page 13, lines 15-24, and page 14, lines 1-14).

As indicated above, trade promotions do not involve promotions including coupons which generally fall under the category of consumer promotions in the food industry. In a typical coupon promotion, a consumer uses or presents the coupon at the time of the purchase of the promoted product typically at a retailer to receive a discount on the price of the product promoted. (See Generally Specification, page 1, lines 10-23, and page 2, lines 1-13).

Before a typical trade promotion, manufacturers and retailers generally negotiate or collaborate on the contract terms of the trade promotion as described above. Before a start of a trade promotion, the independent system captures the trade promotion contract terms and especially contract terms regarding either of predetermined payment values for (a) each promoted product sold during the trade promotion or (b) simply conducting the trade promotion at all. The independent system stores this captured information in a database run by the independent system operator and optionally permits the retailer and the manufacturer to view or access these stored contract terms. The system also optionally allows the retailer to change one or more of the contract terms and permits the retailer and manufacturer to verify the contract terms of the trade promotion and determine what changes have been made. After the start of the promotion, the independent system collects or receives retail POS data (from one or more retailer stores, discrete or in consolidated form), and processes that data (with or

without optional filtering) with respect to the stored trade promotion contract terms specifically including the predetermined payment values to determine an amount of money the manufacturer will owe to the retailer. The independent system optionally provides these parties with access to the collected, received or processed information and facilitates payment of that amount to the retailer. (See Generally Specification, page 11, lines 7-23, page 12, lines 1-5, page 32, lines 2-9, page 40, lines 1-11, and page 54, lines 6-11 along with at least Figs. 1, 2A, 2E, 8, 9, 10 and 11).

More specifically, in one embodiment, the method of the present invention includes the independent system operator before a start of the trade promotion by the retailer capturing the terms of the trade promotion at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. Before the start of the trade promotion by the retailer, the independent system operator also stores the captured terms of the trade promotion in an independent system operator database. The storage of these contract terms for the trade promotion in an independent system database allows the retailer and manufacturer to trust that the correct contract terms will be used to run and determine amounts owed for the trade promotion. (See Generally Specification, page 11, lines 10-12, page 12, lines 10-14, page 13, lines 15-17, page 14, lines 2-21, page 15, lines 5-7 and 13-20, page 18, lines 10-11 and 16-21, page 20, lines 11-12 and 15-16, page 21, lines 7-14 and 18-19, page 22, lines 10-13, page 23, lines 23-24, page 24, lines 1-2 and 12-24, page 25, lines 1, 6, 9-12, 17, 18 and 22, page 26, lines 3, 5 and 9-11, page 27, lines 21-23, page 28, lines 1-6, page 29, line 1 to page 30, line 11, page 30, lines 20-24, page 31, lines 1-13 and 23-24, page 32, lines 1-23, page 33, lines 1-20, page 36, lines 3-23, page 37, lines 15-22, page 38, lines 1-2, page 39, lines 6-11 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34 and terminals 36, 38, 42 of Fig. 1, line 85 and blocks 64, 66, 68, 84, 86 and 88 of Fig. 2A, block 202 of Fig. 2B, processor 30 and tables 70, 72, 74, 75, 90, 92, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 124, 126,

128, 130 and 132 of Fig. 4, Blocks 290, 292 and 296 of Fig. 5, blocks 294 and 298 of Fig. 5A and database server 32 and tables 90, 92, 110, 112, 124 and 126 of Fig. 6).

After the start of the trade promotion by the retailer, the independent system operator collects from the retailer promoted product POS data from at least one in-store POS system of the retailer. In one alternative embodiment, after the start of the trade promotion by the retailer, the independent system operator collects from the retailer product POS data from at least one in-store POS system of the retailer and filters the product POS data using the promoted product identification stored in the independent system operator database to obtain promoted product POS data. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processors 30 and 40, database server 32, internet server 34, wide area network 58, retailer LAN 44, communication lines 46 and files 56 and 60 of Fig. 1, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 228, 230 and 232 of Fig. 2D, blocks 234 and 236 and "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 90, 104 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 110, 122, 124 and 128 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, and files 60 and 152, database server 32, tables 110 and 148 and application 150 of Fig. 8).

In one embodiment, the independent system operator stores the promoted product POS data in the independent system operator database. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23,

page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processors 30 and 40, database server 32, internet server 34, wide area network 58, retailer LAN 44, communication lines 46 and files 56 and 60 of Fig. 1, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 228, 230 and 232 of Fig. 2D, blocks 234 and 236 and "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 90, 104 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 110, 122, 124 and 128 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, and files 60 and 152, database server 32, tables 110 and 148 and application 150 of Fig. 8).

The independent system operator processes the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database. The independent system operator does this processing to determine an amount of money the manufacturer owes to the retailer for the trade promotion. This independent determination of the amounts owed for the trade promotion eliminates the mistrust and potential errors by the retailers and manufacturers. (See Generally Specification, page 11, lines 14-23, page 12, lines 1, 5-9 and 22-23, page 13, lines 1-8, page 14, lines 2-12 and 21-22, page 15, lines 1-2 and 12, page 16, lines 1-4, page 18, lines 10-21, page 19, lines 3-8, page 20, lines 7-11, page 24, lines 22-24, page 25, lines 1-6 and 11-23, page 26, lines 1-5 and 9-11, page 27, lines 21-23, page 28, lines 1-22, page 29, lines 1-8, 18-20 and 23 and page 30, lines 1-11, page 31, lines 23-24, page 32, lines 1-19, page 36, lines 20-23, page 37, lines 1-3 and 9-12, page 39, lines 1-4, page 42, lines 6-10, page 47, lines 10-22, page 48, lines 1-2, 6-13 and 19-21 and page 53, lines 6-13 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34, wide area network 58, files 56 and 60 and terminals 36, 38 and 42 of Fig. 1, block 238 of Fig. 2E, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100 and 102 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 126, 128, 130,

132 and 134 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, blocks 294, 298, 300 and 302 of Fig. 5A, applications 164 and 170 and tables 172 of Fig. 9, and payment 138 of Fig. 11).

In one embodiment, the independent system operator stores the amount of money the manufacturer owes the retailer in the independent system operator database. (See Generally Specification, page 11, lines 14-23, page 12, lines 1, 5-9 and 22-23, page 13, lines 1-8, page 14, lines 2-12 and 21-22, page 15, lines 1-2 and 12, page 16, lines 1-4, page 18, lines 10-21, page 19, lines 3-8, page 20, lines 7-11, page 24, lines 22-24, page 25, lines 1-6 and 11-23, page 26, lines 1-5 and 9-11, page 27, lines 21-23, page 28, lines 1-22, page 29, lines 1-8, 18-20 and 23 and page 30, lines 1-11, page 31, lines 23-24, page 32, lines 1-19, page 36, lines 20-23, page 37, lines 1-3 and 9-12, page 39, lines 1-4, page 42, lines 6-10, page 47, lines 10-22, page 48, lines 1-2, 6-13 and 19-21 and page 53, lines 6-13 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34, wide area network 58, files 56 and 60 and terminals 36, 38 and 42 of Fig. 1, block 238 of Fig. 2E, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100 and 102 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 126, 128, 130, 132 and 134 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, blocks 294, 298, 300 and 302 of Fig. 5A, applications 164 and 170 and tables 172 of Fig. 9, and payment 138 of Fig. 11).

The independent system operator facilitates the manufacturer's payment of the amount of money owed to the retailer for the trade promotion. In one embodiment, the manufacturer's payment to the retailer includes paying the retailer using an electronic funds transfer. In another embodiment, the manufacturer's payment to the retailer includes the independent system operator sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer. In yet another embodiment, the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer and the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the

deduction to the manufacturer. The independent system operator provides rapid financial settlement by making payments for promotions using an electronic funds transfer system, an invoice system or a retailer deduction system to reduce the amount of time which each retailer must wait for payment. (See Generally Specification, page 12, lines 4-9, page 13, lines 8-14, page 14, lines 12-14 and 21-22, page 15, lines 1-2 and 12, page 16, lines 1-4, page 18, lines 10-16, page 19, lines 3-8, page 20, lines 7-11, page 21, lines 20-23, page 37, lines 1-3 and 9-12, page 39, lines 1-4, page 48, lines 13-18 and 22-24, page 49, lines 1-22, page 50, lines 1-23 and page 51, lines 1-15 along with at least systems 10, 20, 22 and 24, financial institution 25, processor 30, database server 32, manufacturer account 27 and retailer account 29 of Fig. 1, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100 and 102 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 126, 128, 130, 132 and 134 of Fig. 4, and tables 172, applications 174 and 176, reports 186 and 192, bank 184, A/R system 188, ACH retailer payment table 196 (misabeled as 176 in Fig. 10) and invoices 180 of Fig. 10).

In one alternative embodiment, before a start of the trade promotion by the retailer, the independent system operator captures terms of the trade promotion including an identification of the retailer, an identification of the manufacturer, a trade promotion type, a UPC Code for the promoted product, at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion, and link codes for associated discounts if the trade promotion is an electronic discount trade promotion, and stores those captured terms of the trade promotion in an independent system operator database. (See Generally Specification, page 11, lines 10-12, page 12, lines 10-14, page 13, lines 15-17, page 14, lines 2-21, page 15, lines 5-7 and 13-20, page 18, lines 10-11 and 16-21, page 20, lines 11-12 and 15-16, page 21, lines 7-14 and 18-19, page 22, lines 10-13, page 23, lines 23-24, page 24, lines 1-2 and 12-24, page 25, lines 1, 6, 9-12, 17, 18 and 22, page 26, lines 3, 5, 7 and 9-11, page 27, lines 21-23, page 28, lines 1-15, page 29, line 1 to page 30, line 11, page 30, lines 20-24, page 31, lines 1-13 and 23-24, page 32, lines 1-23, page 33, lines 1-20, page 36,

lines 3-23, page 37, lines 15-22, page 38, lines 1-2, page 39, lines 6-11, page 41, lines 21-23 and page 42, lines 1-10 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34 and terminals 36 and 42 of Fig. 1, line 85 and blocks 64, 66, 68, 84, 86 and 88 of Fig. 2A, block 202 of Fig. 2B, blocks 210, 212, 214, 216 and 218 of Fig. 2C, processor 30 and tables 70, 72, 74, 75, 90, 92, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 122, 124, 126, 128, 130 and 132 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, blocks 294 and 298 of Fig. 5A and database server 32 and tables 90, 92, 110, 112, 124 and 126 of Fig. 6).

In one embodiment, before the start of the trade promotion by the retailer, the independent system operator enables the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion. This allows the retailers and manufacturers to check the agreed upon contract terms and to know that both parties have the same contract terms. (See Generally Specification, page 11, lines 12-14, page 12, lines 8-9 and 14-17, page 15, lines 10-11 and 16-20, page 18, lines 10-13, page 20, lines 12-14, page 40, lines 6-10, page 51, lines 19-24, page 52, lines 1-22 and page 53, lines 1-2 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34, retailer LAN 44, communication lines 46 and terminals 36, 38 and 42 of Fig. 1, blocks 64 and 66 of Fig. 2A, processor 30 and tables 70, 72, 74, 75, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 122, 124, 126, 128 and 130 of Fig. 4, and communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11), manufacturer workbench 38 and internet server 34 of Fig. 11).

In one embodiment, before the start of the trade promotion by the retailer, the independent system operator enables the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion and storing any changed terms of the trade promotion in the independent system operator database. (See Generally Specification, page 40, lines 1-11 and page 54, lines 6-11 along with at least processor 30 and table 70 of Fig. 3 and database server 32 and tables 76 and 126 of Fig. 4).

In one embodiment, before the start of the trade promotion by the retailer, the method includes the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion. This allows the manufacturer to know, if the retailer changed any of the contract terms, such as a start date for the promotion, which often occurs due to weather or other local circumstances. (See Generally Specification, page 11, lines 12-14, page 12, lines 8-9 and 14-17, page 15, lines 10-11 and 16-20, page 18, lines 10-13, page 20, lines 12-14, page 40, lines 1-11, page 51, lines 19-24, page 52, lines 1-22, page 53, lines 1-2 and page 54, lines 6-11 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34, retailer LAN 44, communication lines 46 and terminals 36, 38 and 42 of Fig. 1, blocks 64 and 66 of Fig. 2A, processor 30 and tables 70, 72, 74, 75, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 122, 124, 126, 128 and 130 of Fig. 4, and communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11), manufacturer workbench 38 and internet server 34 of Fig. 11).

In one embodiment, after a start of the trade promotions by the retailer, the independent system operator provides the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine at least a portion of the amount of money the manufacturer will owe the retailer for the trade promotions. Access of this type of information enables the manufacturer and the retailer to determine how effective the promotion is while the promotion is in effect and after the promotion is completed. (See Generally Specification, page 11, lines 12-14, page 12, lines 8-9 and 14-17, page 15, lines 10-11 and 16-20, page 18, lines 10-13, page 20, lines 12-14, page 40, lines 1-11, page 51, lines 19-24, page 52, lines 1-22 and page 53, lines 1-2 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34, retailer LAN 44, communication lines 46 and terminals 36, 38 and 42 of Fig. 1, blocks 64 and 66 of Fig. 2A, processor 30 and tables 70, 72, 74, 75, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 122, 124, 126, 128 and 130 of Fig. 4, and

communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11), manufacturer workbench 38 and internet server 34 of Fig. 11).

In one embodiment, the method includes the independent system operator verifying that the promoted product POS data is within acceptable tolerances. (See Generally Specification, page 12, lines 20-23, page 13, lines 1-3, page 15, lines 9-10, page 45, lines 17-24, page 46, lines 11-23 and page 47, lines 1-9 along with at least database server 32, file 152, application 156 and tables 157 and 158 of Fig. 8).

In one alternative embodiment, the independent system operator administers a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system. In another alternative embodiment, the independent system operator administers a plurality of trade promotions for a plurality of promoted products involving a plurality of manufacturers and a retailer having a plurality of stores with in-store POS systems. In a further alternative embodiment, the independent system operator administers a plurality of trade promotions for a plurality of promoted products involving a plurality of manufacturers and a plurality of retailers where each retailer has a plurality of stores with in-store POS systems. These alternative embodiments address commercial realities of multiple manufacturers, multiple retailers, and multiple trade promotions. (See Generally Specification, page 13, lines 12-14, page 15, lines 21-23, page 19, lines 18-24, page 20, lines 1-3, page 24, lines 12-21, page 27, lines 21-23, page 28, lines 1-6 and page 33, lines 18-20 along with at least systems 10, 20, 22, 24 and 54 and stores 28 of Fig. 1, block 222 of Fig. 2D, processor 30 and table 90 of Fig. 3, database server 32 and tables 110 and 126 of Fig. 4 and processor 40, database server 32, files 60 and 152, table 148 and application 150 of Fig. 8).

In one embodiment, the system of the present invention provides means for the independent system operator to capture and store before a start of the trade promotion by the retailer, the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. (See Generally

Specification, page 11, lines 10-12, page 12, lines 10-14, page 13, lines 15-17, page 14, lines 2-21, page 15, lines 5-7 and 13-20, page 18, lines 10-11 and 16-21, page 20, lines 11-12 and 15-16, page 21, lines 7-14 and 18-19, page 22, lines 10-13, page 23, lines 23-24, page 24, lines 1-2 and 12-24, page 25, lines 1, 6, 9-12, 17, 18 and 22, page 26, lines 3, 5 and 9-11, page 27, lines 21-23, page 28, lines 1-6, page 29, line 1 to page 30, line 11, page 30, lines 20-24, page 31, lines 1-13 and 23-24, page 32, lines 1-23, page 33, lines 1-20, page 36, lines 3-23, page 37, lines 15-22, page 38, lines 1-2, page 39, lines 6-11 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34 and terminals 36, 38, 42 of Fig. 1, line 85 and blocks 64, 66, 68, 84, 86 and 88 of Fig. 2A, block 202 of Fig. 2B, processor 30 and tables 70, 72, 74, 75, 90, 92, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 124, 126, 128, 130 and 132 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, blocks 294 and 298 of Fig. 5A and database server 32 and tables 90, 92, 110, 112, 124 and 126 of Fig. 6).

In one embodiment, the system also includes means for the independent system operator to collect from the retailer, promoted product POS data for the promoted product from at least one in-store POS system of the retailer after the start of the trade promotion by the retailer. In an alternative embodiment, the system includes means for the independent system operator to collect from the retailer, product POS data from at least one in-store POS system of the retailer after the start of the trade promotion by the retailer, and means for the independent system operator to filter the product POS data using the promoted product identification to obtain promoted product POS data for the promoted product. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processors 30 and 40, database server 32, internet server 34, wide area network 58, retailer LAN 44, communication lines 46 and files 56 and 60 of Fig. 1, blocks 210 and 220 of Fig. 2C,

blocks 220, 222, 228, 230 and 232 of Fig. 2D, blocks 234 and 236 and "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 90, 104 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 110, 122, 124 and 128 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, and files 60 and 152, database server 32, tables 110 and 148 and application 150 of Fig. 8).

In one embodiment, the system further includes means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. (See Generally Specification, page 11, lines 14-23, page 12, lines 1, 5-9 and 22-23, page 13, lines 1-8, page 14, lines 2-12 and 21-22, page 15, lines 1-2 and 12, page 16, lines 1-4, page 18, lines 10-21, page 19, lines 3-8, page 20, lines 7-11, page 24, lines 22-24, page 25, lines 1-6 and 11-23, page 26, lines 1-5 and 9-11, page 27, lines 21-23, page 28, lines 1-22, page 29, lines 1-8, 18-20 and 23 and page 30, lines 1-11, page 31, lines 23-24, page 32, lines 1-19, page 36, lines 20-23, page 37, lines 1-3 and 9-12, page 39, lines 1-4, page 42, lines 6-10, page 47, lines 10-22, page 48, lines 1-2, 6-13 and 19-21 and page 53, lines 6-13 along with at least systems 10, 20, 22 and 24, processors 30 and 40, database server 32, internet server 34, wide area network 58, files 56 and 60 and terminals 36, 38 and 42 of Fig. 1, block 238 of Fig. 2E, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100 and 102 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 126, 128, 130, 132 and 134 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, blocks 294, 298, 300 and 302 of Fig. 5A, applications 164 and 170 and tables 172 of Fig. 9, and payment 138 of Fig. 11).

In one embodiment, the system further includes collection means for the independent system operator to collect product POS data from a retailer having a plurality of stores with in-store POS systems and consolidate the product POS data into a consolidated file for transfer to the filtering means. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page

15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processors 30 and 40, database server 32, internet server 34, wide area network 58, retailer LAN 44, communication lines 46 and files 56 and 60 of Fig. 1, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 226, 228, 230 and 232 of Fig. 2D, block 234 and "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 90, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 110, 122, 124 and 128 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, files 60 and 152, database server 32, tables 110 and 148, application 150, files 60 and 152 and processor 40 of Fig. 8 and communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11) and internet server 34 of Fig. 11).

In one embodiment, the system further includes filtering means including means for the independent system operator to compare the product POS data to a list of UPCs for the trade promotion to obtain the promoted product POS data. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 34, lines 14-23, page 35, lines 1-23, page 36, lines 1-2, page 37, lines 13-17, page 38, lines 19-22, page 39, lines 6-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processors 30 and 40, database server 32, internet server 34, wide area network 58, retailer LAN 44, communication lines 46 and files 56 and 60 of Fig. 1, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 226, 228, 230 and 232 of Fig. 2D, blocks 234 and "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 90, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 110, 122, 124, 126, 128 and 132 of Fig. 4,

blocks 250-290 of Fig. 5, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, and processor 40, files 60 and 152, database server 32, tables 110 and 148 and applications 150 and 154 of Fig. 8).

In one embodiment, the system further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer, wherein the reporting means reports the promoted product POS data via an internet. (See Generally Specification, page 11, lines 12-14, page 12, lines 8-9 and 14-17, page 15, lines 10-11 and 16-20, page 18, lines 10-13, page 20, lines 12-14, page 40, lines 1-11, page 51, lines 19-24, page 52, lines 1-22 and page 53, lines 1-23, page 54, lines 1-5 along with at least systems 10, 20, 22 and 24, processor 30, database server 32, internet server 34, retailer LAN 44, communication lines 46 and terminals 36, 38 and 42 of Fig. 1, block 240 of Fig. 2E, processor 30 and tables 70, 72, 74, 75, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 122, 124, 126, 128 and 130 of Fig. 4, reports 186 and 192, invoices 180 and A/R system 188 of Fig. 10 and reports 200, communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11), manufacturer workbench 38 and internet server 34 of Fig. 11).

In one embodiment, the system also includes determining means for the independent system operator to consolidate the promoted product POS data for a plurality of products for the manufacturer. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 22, 24 and 54, stores 28, processors 30 and 40, wide area network 58, files 56 and 60, retailer LAN 44, communication lines 46 and manufacturer account 27 of Fig. 1, block 66 of Fig. 2A, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 228, 230 and 232 of Fig. 2D, "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 92, 94, 96, 102 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 112, 114, 116, 118, 122, 124, 126 and 132 of Fig. 4, processor 40,

files 60 and 152, table 148 and application 150 of Fig. 8, tables 76, 112 and 172 and applications 164, 166 and 170 of Fig. 9 and reports 200, communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11) and internet server 34 of Fig. 11).

In one embodiment, the system further includes collecting means for the independent system operator to receive consolidated promoted product POS data from a retailer network, wherein the retailer has a plurality of stores with in-store POS systems and the retailer network collects product POS data from the plurality of in-store POS systems in the plurality of stores and filters the consolidated product POS data to obtain the consolidated promoted product POS data. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processors 30 and 40, database server 32, internet server 34, wide area network 58, retailer LAN 44, communication lines 46 and files 56 and 60 of Fig. 1, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 226, 228, 230 and 232 of Fig. 2D, blocks 234 "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 90, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 78, 80, 110, 122, 124, 126, 128 and 132 of Fig. 4, blocks 290, 292 and 296 of Fig. 5, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, and processor 40, files 60 and 152, database server 32, tables 110 and 148, warehouse 153 and application 150 of Fig. 8).

In one embodiment, the system further includes determining means including means for the independent system operator to verify that the promoted product POS data is within acceptable tolerances for the promoted product. (See Generally Specification, page 12, lines 20-23, page 13, lines 1-3, page 15, lines 9-10, page 45, lines 17-24, page 46, lines 11-23 and page 47, lines 1-9 along with at least database server 32, file 152, application 156 and tables 157 and 158 of Fig. 8).

In one embodiment, the system also includes determining means for the independent system operator to consolidate the promoted product POS data for a plurality of trade promotions for the manufacturer and paying means for the independent system operator to aggregate payments owed to the retailer by the manufacturer for the plurality of trade promotions. The system provides rapid financial settlement by making payments for promotions using an electronic funds transfer system, an invoice system or a retailer deduction system to reduce the amount of time which each retailer must wait for payment. (See Generally Specification, page 11, lines 14-16, page 12, lines 4-9 and 17-19, page 13, lines 8-17, page 14, lines 12-18 and 21-22, page 15, lines 1, 8-9 and 12, page 19, lines 3-8, page 20, lines 7-12, page 21, lines 20-23, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 1-3 and 9-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9, page 39, lines 1-4, page 48, lines 13-18 and 22-24, page 49, lines 1-22, page 50, lines 1-23 and page 51, lines 1-15 along with at least systems 10, 20, 22, 24 and 54, stores 28, financial institution 25, processors 30 and 40, database server 32, internet server 34, manufacturer account 27, retailer account 29, wide area network 58, files 56 and 60, retailer LAN 44 and communication lines 46 of Fig. 1, blocks 64, 84, 85, 86 and 88 of Fig. 2A, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 228, 230 and 232 of Fig. 2D, "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100 and 102 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 126, 128, 130, 132 and 134 of Fig. 4, processor 40, files 60 and 152, table 148 and application 150 of Fig. 8, tables 172, applications 174 and 176, reports 186 and 192, bank 184, A/R system 188, ACH retailer payment table 196 (misabeled as 176 in Fig. 10) and invoices 180 of Fig. 10 and communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11) and internet server 34 of Fig. 11).

In one embodiment, the system further includes means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion.

The system provides rapid financial settlement by making payments for promotions using an electronic funds transfer system, an invoice system or a retailer deduction system to reduce the amount of time which each retailer must wait for payment. (See Generally Specification, page 12, lines 4-9, page 13, lines 8-14, page 14, lines 12-14 and 21-22, page 15, lines 1-2 and 12, page 16, lines 1-4, page 18, lines 10-16, page 19, lines 3-8, page 20, lines 7-11, page 21, lines 20-23, page 37, lines 1-3 and 9-12, page 39, lines 1-4, page 48, lines 13-18 and 22-24, page 49, lines 1-22, page 50, lines 1-23 and page 51, lines 1-15 along with at least systems 10, 20, 22 and 24, financial institution 25, processor 30, database server 32, manufacturer account 27 and retailer account 29 of Fig. 1, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100 and 102 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 126, 128, 130, 132 and 134 of Fig. 4, and tables 172, applications 174 and 176, reports 186 and 192, bank 184, A/R system 188, ACH retailer payment table 196 (misabeled as 176 in Fig. 10) and invoices 180 of Fig. 10).

An alternative system of the present invention includes an independent system having a processor and an electronic database accessible by the processor which are adapted to, before a start of the trade promotion by the retailer, capture and store the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion, after the start of the trade promotion by the retailer, to collect from the retailer promoted product POS data for the promoted product of the trade promotion from the retailer, to process the collected promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the electronic database to determine an amount of money the manufacturer owes to the retailer for the trade promotion, and to facilitate the manufacturer's payment of the amount of money determined to be owed to the retailer for the trade promotion. The

system provides rapid financial settlement by making payments for promotions using an electronic funds transfer system, an invoice system or a retailer deduction system to reduce the amount of time which each retailer must wait for payment. (See Generally Specification, page 11, lines 10-12 and 14-23, page 12, lines 1, 4-14, 17-19 and 22-23, page 13, lines 1-17, page 14, lines 2-21, page 15, lines 1-2, 5-9 and 12-20, page 16, lines 1-4 and 18, page 18, lines 10-21, page 19, lines 3-8, page 20, lines 7-12 and 15-16, page 21, lines 7-14 and 18-23, page 22, lines 10-13 and 19-23, page 23, lines 1-19 and 23-24, page 24, lines 1-2 and 12-24, page 25, lines 1-6, 9-13 and 15-23, page 26, lines 1-5 and 7-11, page 27, lines 21-23, page 28, lines 1-22, page 29, line 1 to page 30, line 11, page 30, lines 20-24, page 31, lines 1-13 and 23-24, page 32, lines 1-23, page 33, lines 1-20, page 36, lines 3-23, page 37, lines 1-3 and 9-22, page 38, lines 1-2 and 19-22, page 39, lines 1-4 and 6-11, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23, page 45, lines 1-9, page 47, lines 10-22, page 48, lines 1-2 and 6-24, page 49, lines 1-22, page 50, lines 1-23, page 51, lines 1-15 and page 53, lines 6-13 along with at least systems 10 and 24, processor 30, database server 32, internet server 34 and terminals 36 of Fig. 1, line 85 and blocks 64, 66, 68, 84, 86 and 88 of Fig. 2A, block 202 of Fig. 2B, block 210 of Fig. 2C, block 230 of Fig. 2D, blocks 234, 236, 238 and 240 and "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 30 and tables 70, 72, 74, 75, 90, 92, 94, 96, 98, 100, 102, 104 and 106 of Fig. 3, database server 32 and tables 76, 77, 78, 80, 110, 112, 114, 116, 118, 122, 124, 126, 128, 130 and 132 of Fig. 4, blocks 250-292 and 296 of Fig. 5, blocks 294, 298, 300 and 302 of Fig. 5A, database server 32 and tables 90, 92, 110, 112, 124 and 126 of Fig. 6, database server 32 and tables 110, 122, 124 and 146 of Fig. 7, and database server 32 and tables 110, 112, 140, 144 and 148, applications 150, 160 and 154 and file 152 of Fig. 8, applications 164 and 170 and tables 172 of Fig. 9, tables 172, applications 174 and 176, reports 186 and 192, bank 184, A/R system 188, ACH retailer payment table 196 (misabeled as 176 in Fig. 10) and invoices 180 of Fig. 10 and internet server 34 and payment 138 of Fig. 11).

This alternative system includes a retailer system in communication with the independent system, having a processor adapted to, after the start of the trade promotion by the retailer, collect promoted product POS data for the promoted product

from a plurality of retailer stores, to consolidate the promoted product POS data, and to transfer the promoted product POS data for the trade promotion to the independent system. (See Generally Specification, page 11, lines 14-16, page 12, lines 17-19, page 13, lines 15-17, page 14, lines 15-18, page 15, lines 8-9, page 19, lines 3-8, page 20, lines 11-12, page 22, lines 19-23, page 23, lines 1-19, page 24, lines 22-24, page 25, lines 9-12, page 26, lines 1-4, 7, 8 and 10, page 27, lines 21-23, page 28, lines 1-6, page 29, lines 9-17, page 30, lines 4-11, page 37, lines 13-17, page 38, lines 19-22, page 42, lines 6-10 and 13-23, page 43, lines 1-23, page 44, lines 1-23 and page 45, lines 1-9 along with at least systems 10, 20, 24 and 54, stores 28, processor 40, wide area network 58, files 56 and 60, retailer LAN 44 and communication lines 46 of Fig. 1, block 66 of Fig. 2A, blocks 210 and 220 of Fig. 2C, blocks 220, 222, 228, 230 and 232 of Fig. 2D, "Filtered Consolidated Item Movement File Sent To Independent System" of Fig. 2E, processor 40, files 60 and 152, table 148 and application 150 of Fig. 8 and communication lines 46, retailer workbench 42 (misabeled as 36 in Fig. 11) and internet server 34 of Fig. 11).

This alternative also includes a manufacturer system in communication with the independent system. (See Generally Specification, page 11, lines 12-14, page 12, lines 8-9 and 14-17, page 15, lines 10-11 and 16-20, page 18, lines 10-13, page 20, lines 12-14, page 23, lines 23-24 and page 24, lines 1-8 page 40, lines 6-10, page 51, lines 19-24, page 52, lines 1-22 and page 53, lines 1-2 along with at least systems 10, 22 and 24, terminals 38 and manufacturer account 27 of Fig. 1, block 64 of Fig. 2A, invoice 180, invoice report 186 and A/R system 188 of Fig. 10 and communication lines 46, manufacturer workbench 38 and internet server 34 of Fig. 11).

It should be appreciated that although specification citations are given in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to suggest in any way that the terms of the claims are limited to the examples in the specification. As demonstrated by the references numerals and citations below, the claims are fully supported by the specification as required by law. However, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for

the claim terminology as is done here to comply with rule 1.192(c) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the references numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 to 32, 37-83, and 88-94 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,832,458 to Jones ("Jones") in view of U.S. Patent No. 5,056,019 to Schultz et al. ("Schultz").

VII. ARGUMENT

A. Brief History of Application On Appeal

The following is a brief history of the prosecution of this application. Appellants filed this application on August 30, 1999. The Examiner issued a non-final Office Action on June 5, 2001. Appellants filed a Response to Office Action on November 5, 2001. The Examiner issued a non-final Office Action on February 14, 2002. Appellants filed a Response to Office Action on May 14, 2002. The Examiner issued a final Office Action on August 13, 2002. In this final Office Action, the Examiner rejected then pending Claims 1 to 94 in view of U.S. Patent No. 5,832,458 to Jones ("Jones"). Appellants filed a Notice of Appeal on October 16, 2002.

The May 19, 2004 Board of Patent Appeals and Interferences Decision ("2004 Board Decision") reversed the rejection of then pending Claims 1 to 32 and 37 to 94, and upheld the rejection of then pending Claims 33 to 36. The 2004 Board Decision reversed the Examiner's §102(a) rejection of Claims 1 to 32, 37 to 83, and 88 to 94 holding that: "we fail to find that Jones teaches the independent system *operator* to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufactures payment and the amount of money owed. Jones clearly teaches that the reports provided are sent to the manufacturer to support the settlement process. However, Jones does not teach that the independent system operator performs this settlement." The 2004 Board Decision reversed the Examiner's §102(a) rejection of Claims 84 to 87 holding that: "we fail to find that Jones teaches capturing the terms of the trade promotion including link codes for associate discounts if any of the trade promotions are electronically discount trade promotions."

The Examiner issued another Office Action on February 7, 2005. Consistent with the Board's May 19, 2004 decision, this February 7, 2005 Office Action rejected then pending Claims 33 to 36 under 35 U.S.C. §102(a) as being anticipated by Jones. In this February 7, 2005 Office Action, the Examiner also rejected then pending Claims 1 to 32 and 37 to 94 under 35 U.S.C. §103(a) in view of Jones and secondary references.

Appellants filed a Response to Office Action on July 7, 2005. This Response to Office Action included Claims 1 to 32, 37 to 83, and 88 to 94. Appellants amended

independent Claims 1, 23, 30, 37, 47, 68, 74, 77, 88, 89 and 90 taking into account the Board's interpretation of the then pending language in the appealed claims. Appellants cancelled Claims 33 to 36 and 84 to 87 to expedite prosecution of this application. Appellants also filed a Declaration under 37 C.F.R. §1.132 of Richard J. Windish to submit evidence of a long felt and unresolved need for the present invention. A copy of this Declaration is attached hereto in the Evidence Appendix.

The Examiner issued a final Office Action on September 26, 2005. In this September 26, 2005 Office Action, the Examiner rejected Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. §103(a) as being unpatentable over Jones in view of Schultz. These are the claims currently on appeal.

B. Jones Discloses an Electronic Audit System for Auditing Transactions at Retailer Point of Sale Systems

Jones discloses a system for electronically auditing sales transactions involving coupons redeemed through a retailer point of sale ("POS") system. The Jones audit system independently captures each in-store retailer point of sale transaction (including any transaction involving a coupon) by monitoring communications between the individual POS scanners or cash registers in a retail store and the in-store processor (as illustrated in Fig. 1 of Jones). The Jones audit system periodically transmits this retail sales transaction data it collects to an audit system central processor. Jones explains that one advantage of its audit system is that "the traditional paper-based audit can be eliminated and settlement between parties can be handled faster and with greater cost efficiency." (Jones, column 4, lines 11-14).

More specifically, Jones discloses that in

one aspect of the present invention, an automated system and method for electronically auditing point-of-sale transactions is provided. Each retail store outfitted with the present invention has at least partially automated point-of-sale system for processing a retail sales transaction in the normal operation of the retail store. A non-invasive automated electronic auditing system or auditor is disposed in each store for monitoring the point-of-sale system in a substantially totally passive manner and for collecting a copy of each retail sales transactions on the point-of-sale system.

The electronic auditing system preferably includes a sensor assembly for detecting the processed retail sales transactions and a computer processor coupled to the sensor assembly for processing the detected retail sales transactions. The point-of-sale system operates independently of the electronic auditing system; the electronic auditing system operating responds to the point-of-sale system without requiring any responsive operation by the point-of-sale system and without requiring any modifications of the point-of-sale system. An audit system processor is also provided which is remotely located from the retail store for receiving the processed retail sales transaction data for subsequent use by manufacturers.

In another aspect of the invention, a method for electronically auditing point-of-sale transactions is provided.

An electronic audit system within a retail store passively records an entire point-of-sale system sales transaction and stores it in an audit transaction database. The electronic audit system continues to record and store transactions as they occur until a request for uploading of the stored records is received by the electronic audit system. The stored records are communicated to an audit system processor which is remotely located from said electronic audit system. The audit system processor analyzes the communicated records based on predetermined guidelines stored in the audit system processor and prepares reports based on the results of the audit system processor's analysis. The reports flag activity of the point-of-sale system which is a predetermined statistical deviation from normal. In another embodiment of the invention, the reports flag predetermined incremental increases relative to a benchmark in sales of at least one selected product (Jones, column 4, lines 18-59) (Emphasis added).

The Jones audit system and method thus only provides a secondary passive monitoring of retail POS transactions.

For monitoring retail POS transactions including coupons, the Jones audit system prepares and provides daily reports to manufacturers and retailers regarding coupon activity. Specifically, Jones states that:

[a] couple of examples of the many types of reports 70 available include providing daily cashier shift report on coupon activity to store 10 manager, and providing a daily

audit (by manufacturer) of coupons redeemed to store headquarters and manufacturers' agents to support the settlement process. Other examples of some of the reports 70 available from the present invention include, and not by way of limitation:

Summary of coupons redeemed (dollars total and number) by day, store and manufacturer. If desired, this summary may be compared to a 52 week history file, with statistically high exceptions flagged.

Summary of manual overrides by store, day, and manufacturer. If desired, this summary may be compared to 52 week history, similar stores in account or a particular market, with statistical exceptions flagged.

Periodical (preferably weekly) summary by store, account and manufacturer of the dollar and total dollar level of valid coupon activity for settlement purposes.

Comparison of flagged stores with cashier habits, extremely high coupon activity, extremely fast total transaction times (sometimes indicative of fraudulent misredemptions), non-normal variations in UPC distributions, and high frequency of manual overrides (Jones, column 10, lines 33-57) (Emphasis added).

Jones expressly teaches that reports of coupons redeemed are provided by the Jones audit system to support the settlement process which is subsequently done by the retailer and the manufacturer. Jones further provides that:

[a]udit system central processor 60 also prints, as required or deemed appropriate, a potential discrepancy report 70 for both headquarters and manufacturers' agents including, but not limited to:

unusual coupon activity (by manufacturer, by brand or by item) by store, cashier, time of day, or day of week

unusual number of manual overrides by manufacturer, by brand or by item for each store and cashier

specific invalid coupon rejections for particular brand, item or expired code

closest purchased item to coupon that was rejected (e.g., brand size variations)

unusual coupon activity as a percentage of total items purchased or percentage of manufacturer purchases by account, store and cashier for a specified period (Jones, column 10, lines 64-67, column 11, lines 1-11).

The focus of Jones is to provide a verification of coupon transactions in the form of an auditing system for coupon transactions which better enables the retailer and manufacturer to settle the amounts of money the manufacturer owes the retailer for the coupons accepted by the retailer on products purchased by consumers. However, Jones does not teach using its audit system for facilitating the settlement of such coupons between a retailer and a manufacturer. In other words, Jones does not teach that its audit system determines the amount of money the manufacturer owes the retailer for each coupon for enabling the Jones audit system to pay or cause payment of that amount of money to the retailer on behalf of the manufacturer to the retailer. Instead, the manufacturer uses the Jones reports to verify the information separately received from the retailer. This is entirely consistent with the 2004 Board Decision.

In the Summary of the Invention section, Jones states that the:

system and method of the present invention provides a robust and auditable process to ensure the accurate and timely settlement between consumer goods manufacturers and the retailers of their products when the manufacturer issues coupons or when the manufacturer agrees to a temporary price reduction in return for retailer support that should lead to increased sales volumes ("trade promotions"; discussed below) (Jones, column 4, lines 60-67) (Emphasis added).

Thus, Jones also teaches using its audit system as a second source for passively monitoring retail POS transactions which include trade promotions. However, Jones does not teach using its audit system for facilitating the settlement of such non-coupon promotions or trade promotions between a retailer and a manufacturer. In other words, Jones does not teach that its audit system determines the amount of money the manufacturer owes the retailer for each non-coupon promotion, trade promotion and for paying or causing payment of that amount of money from the manufacturer to the retailer.

In the Detailed Description section in Column 11, Jones generally discusses the use of the Jones audit system for monitoring trade promotions as follows:

[a]nother use for the present invention lies in the area of temporary price reductions between manufacturers and retailers. Commonly referred to as "trade promotions", this class of promotions involves a manufacturer offering a significant temporary price reduction to the retailer in return for improved merchandising support by the retailers in the form of extra advertisement, in-store display or price reductions. Such deals typically take the form of a contract between the parties specifying what form of price reduction or free goods will be offered in return for what performance or action that the retailer expects to take. The timing and terms of mutual performance create frequent disputes between the parties with regard to the financial settlement. These disputes are commonly referred to as "deductions" and frequently lead to unilateral decisions by one or the other to withhold partial payment or demand extra funds. Deductions underlie a significant degree of cost and effort expended to resolve the settlement to both parties' satisfaction.

Manufacturer selects items for price reduction support by class of trade and coordinates a calendar of events which can be supported by available manufacturing capacity. Manufacturer also negotiates a contract with the retailer for reduced prices or a rebate given specified retailer performance.

The retailer plans promotion events to achieve the required performance. He also communicates information on promotion activities throughout necessary internal functions. He purchases desired merchandise quantities based upon agreed-to price reduction. He summarizes necessary information on promotional support activities and invoices manufacturer or deducts the price discount from checks paid by retailer.

The manufacturer reviews retailer purchase history and retailer contractual performance measures and prepares check to retailer in accordance with internal/retailer supplied information. Manufacturer engages retailer finance/accounting personnel in resolving deductions as required. Retailer receives payment from manufacturer and has finance/accounting personnel resolve deductions as required (Jones, column 11, lines 21-60) (Emphasis added).

These four paragraphs describe trade promotions and the processes for implementing trade promotions prior to the Jones system.

Jones does not teach or suggest changing these processes or systems. Jones simply teaches using its system to passively audit retail POS transactions including trade promotions.

More specifically, starting in the last paragraph in Column 11 and continuing in Column 12, Jones describes that its audit system can be applied to trade promotions as follows:

[t]he electronic audit of the trade promotion process, according to the present invention, utilizes the passive collection of actual POST data by item and by transaction to establish a database of performance. By tying the contract to performance, the electronic audit simplifies settlement and provides a clear record to both parties regarding the results of the event.

As before, the manufacturer selects items for price reduction support by class of trade and coordinates a calendar of events which can be supported by available manufacturing capacity. Manufacturers contract to reimburse retailers relative to the sales performance of the selected items (e.g., incremental sales volume relative to a benchmark such as unsupported normal volume or established trend line of sales volume for that retailer/retail chain). The retailer plans promotional events to achieve the desired performance and purchases the desired merchandise quantities based upon the agreed-to price reduction.

(Jones, column 11, lines 61-67, column 12, lines 1-11). This section of Jones mentions the contract between the manufacturer and retailer for a trade promotion, but does not expressly or inherently disclose that the Jones audit system captures or stores in its database at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. As discussed below, Jones does not need to capture and store this information.

Jones then explains that:

[t]he system and method of the present invention electronically audits and tracks the results of the retailer's efforts while monitoring and recording all POS transactions as described earlier. Each transaction record is preferably retained in a history file for a predetermined period of time, perhaps 52 weeks to empirically determine what is the established (normal) sales volume for a particular product for a specified retailer, and independently documents any incremental sales volume increases to support the trade promotion settlement process. Predetermined and customized reports of these incremental sales volume increases, definitively documenting promotional performance on behalf of the retailer, is preferably sent to both the retailer and the manufacturer after each event to support the settlement process. As before, the retailer summarizes the necessary information on promotional support activities, including the report documentation if desired, invoices the manufacturer, and deducts the price discount from checks paid by the retailer to the manufacturer (Jones, column 12, lines 12-29) (Emphasis added).

The Jones audit system inherently must have an identification of the promoted product of the trade promotion to independently document any incremental sales volume increases and to send audit reports to the manufacturer and the retailer of any such incremental sales volume increases. Jones specifically teaches that (just like for coupons): (1) this information and these reports are sent to the manufacturer and the retailer to support the trade promotion settlement process, and (2) the retailer invoices the manufacturer and deducts the price discount from checks paid by the retailer to the manufacturer. Jones does not disclose storing (because the Jones audit system does not need to store in its database) (a) the predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, or (b) the predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. Additionally, Jones does not teach or suggest that its audit system will access its database to process the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the

manufacturer will owe the retailer for conducting the trade promotion to determine an amount of money the manufacturer owes to the retailer for the trade promotion.

Rather, Jones states that

by crafting the promotional contract around performance goals evidenced by incremental sales volume increases and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit according to the present invention materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, more prompt and accurate settlements between the parties materially reduce the cost of resolving the disputes fostered by the current process (Jones, column 12, lines 30-40) (Emphasis added).

Jones does not provide any further disclosure of how the Jones passive audit system would work with respect to trade promotions. As indicated by the above passages, after receiving the Jones audit system promotional performance report for the trade promotion, the retailer still has to summarize the activities, invoice (or deduct from) the manufacturer based on the contracted predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion or based on the predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion.

The Jones solution is to monitor the in-store POS system of a retailer, passively capture POS data by item and by transaction which is sent from the individual in-store cash registers to the in-store central system, and to provide the captured POS data to the manufacturers and retailers who use this information to determine or verify the amount of money the manufacturer owes the retailer. All of this occurs in Jones without any specific reference to, or knowledge of, the payment value per product or payment value per trade promotion terms of the trade promotion itself. Jones presumes that the manufacturer and retailer already have such information in their possession and is therefore only interested in providing secondary information regarding the number of redeemed coupons or product sales to these parties. The manufacturer and retailer use that data to calculate for themselves or verify each other's calculation of the amount of

compensation that should be provided. In other words, Jones teaches separately obtaining the consumer-retailer transactions from the in-store cash registers, and then providing that separately obtained data to the manufacturers for the manufacturers to make the amount owed calculations. In such a system, the manufacturer has separately obtained a record of the consumer-retailer transactions from the in-store cash registers and does not have to worry about the retailer changing or manipulating the POS data the retailer collects, or that the retailer is incorrectly interpreting the POS data the retailer collects.

This means that the Jones system only needs an identification of the promoted product to track the transactions including the promoted product and to provide such information to the manufacturers and retailers. The Jones system does not need to capture or store at least one of a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion because that information is irrelevant for the intended purpose of Jones. Jones does not need this information because Jones acts as an audit system for separate provision and verification of the number of promoted products sold, and as indicated by the 2004 Board Decision not for determining “the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer’s payment.”

C. Schultz Discloses a Consumer Marketing Program

The general problem Schultz addresses is that:

[t]wo of the most commonly used purchase incentives are the rebate offer and the discount coupon. Both of these purchase incentive media, under current systems, present significant problems in distribution, fulfillment and redemption. (Column 1, lines 18-23).

Columns 1, 2 and 3 of Schultz goes into great detail about the problems with rebate offers and discount coupons. Schultz attempts to solve this problems by providing a marketing program that replaces rebate offers and discount coupons with a

kind of updated version of the old S&H green stamps program. More specifically, Schultz explains that the:

present invention resides in a marketing program for rewarding specific purchase behavior and increasing consumer brand loyalty for manufacturers who participate in the program. The present invention also provides the system components necessary to implement this marketing program.

Manufacturers are solicited to provide incentive rewards for purchases of specific quantities of their products. The purchase incentives are compiled into a reward booklet which is distributed periodically directly to consumers at their homes and at participating retail outlets. The offers include descriptions of the participating products and the conditions for fulfillment of the purchase reward offer requirements.

A consumer joins the program and receives a consumer identification code and a member identification card. This consumer identification code can be encoded in machine-readable code on the identification card, in which case the code is scanned at the check-out counter when the consumer purchases his products. Alternatively, the consumer identification code can be in non machine readable format, in which case the code is entered manually on the check-out counter terminal. The consumer identification code is used to identify the consumer's purchases in purchase records stored in a program data collector at the retail store.

The purchase records of the UPC codes for the products purchased by identified consumers at the participating retail outlets are periodically transferred to a program management computer system maintained by a marketing firm. In the program management computer system, the consumer identified purchase information is compared to the offer descriptions of the participating products and recorded for each consumer. Each consumer is sent a periodic summary of all his purchases of the participating products and a reward certificate for the rewards earned. This reward certificate can be a negotiable check or can be adapted for redemption at a participating retail store. The manufacturers of the participating products are invoiced for their portion of the rewards earned.

Reward certificates that are adapted for redemption at a participating retail store are redeemed by the consumer using the identification card and consumer identification code. The retail outlet then forwards the certificates to the marketing firm for reimbursement. The reward certificates may have machine-readable codes, in which case, the retail store can record the redemption transactions on the in-store computer system (Column 4, lines 50-68, Column 5, lines 1 to 30) (Emphasis added).

Schultz thus teaches a consumer marketing program. A consumer joins the Schultz marketing program and receives a consumer identification code. The Schultz program provides the consumer a reward booklet. The reward booklet describes promoted products and the conditions for fulfillment of the purchase reward offer requirements for those promoted products. When the consumer buys a promoted product at a retailer, the consumer provides the consumer's identification code. The retailer does not provide a discount on the promoted product to the consumer associated with the Schultz marketing program. The retailer is not owed and does not receive any payment from the manufacturer of the promoted product for the sale of the promoted product under the Schultz marketing program because the retailer is not giving the consumer a discount on product and does not have a contract with the retailer to promote the product or give the consumer a discount. (It should be noted that Schultz does state that the retailer could provide a discount separate from the Schultz program on the promoted product under a different discount program, but reimbursement for such separate discount is not addressed by Schultz).

The retailer sends the consumer identification code and UPC code for the promoted product to a program management computer system. The program management computer system determines if the consumer is entitled to a reward. The program management computer system sends the consumer a periodic summary of the consumer's purchases of the promoted products and any reward certificate for the rewards earned by the consumer. Thus, the Schultz system does not provide payments to the retailer for the sales of the promoted products. The program management

computer system invoices the manufacturers of the participating products for their portion of the rewards provided to the consumer.

Schultz teaches that the reward certificate can be a negotiable check. If the reward certificate is in the form of a negotiable check, the consumer can cash the check in a conventional manner and does not have to cash the check at the retailer who sold the consumer the promoted product. Schultz also teaches that the reward certificate can be in a form for redemption at a participating retail store. If the reward certificate is in the form redeemable at a retailer, the consumer can use the reward certificate at the retailer and the retailer forwards the reward certificate to the marketing firm for reimbursement. At this point in time, relative to the retailer, the reward certificate is not tied to a purchase of a promoted product that the consumer will buy when cashing the reward certificate. The reward certificate is for promoted products previously purchased by the consumer. Therefore, the Schultz system does not teach facilitating or paying the retailer for a discount on the purchase of a product, but rather simply for the cashing of a reward certificate.

Moreover, Schultz appears to teach that the promoted products in the manufacturer marketing program can be purchased at a plurality of retailers. Thus, for at least this additional reason, the Schultz system does not teach providing payments to the retailer for discounts on the sales of the promoted products because a retailer that sold the consumer the promoted product may not be cashing any reward certificate for the consumer (because the consumer may cash the reward certificate at a bank or at another retailer).

Accordingly, in Schultz, there is no discount at the retailer point of sale so there is no need for a settlement function between the manufacturer and retailer for any discount given on the sale of the product. The reward the consumer ultimately receives is in the form of a reward certificate or tender for a plurality of purchases (which like cash) does not connect back to any discount or trade promotion provided by the retailer.

D. 2004 Board Decision and Amendments to Claims in View of Board Decision

The claims pending in the prior appeal included the language "payment term information." The 2004 Board Decision interpreted the language "payment term information" present in the appealed claims as follows:

[w]e find that Appellants' use of "payment term information" is properly construed to mean a sub-set of payment information since the use of the word term is used. Therefore, we find that the term "payment term information" is any information but not all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and related payment term information. Thus, information of sales volume can be properly construed to be "payment term information" since sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion.

(Board of Appeals Decision, Appeal No. 2004-0199, page 11, ¶ 1). The Board interpreted the claim language "payment term information" to be broad enough to include sales volume information on the promoted product.

Based on that broad interpretation of the language "payment term information," the Board then found that:

[w]e find that Jones teaches a system and method that electronically audits and tracks the results of the retailer's efforts while monitoring and recording all POS transactions. Each transaction record empirically establishes what is the incremental sales volume increase of a particular product promoted to support the trade promotion settlement process. See column 12, lines 14-20. Therefore, we find that Jones teaches "capturing the terms of the trade promotion at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer in storing the captured terms of the traded promotion in the electronic database of the independent system."

(Board of Appeals Decision, Appeal No. 2004-0199, page 11, ¶ 2). The Board thus found that Jones teaches several elements in the then pending claims because these elements included the language "payment term information" which was broad enough to encompass sales volume information and the Jones audit system captures sales

volume information for the promoted product. The Board did not find that Jones teaches that its audit system captures or stores (a) the predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, or (b) the predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion.

The Board further explained that:

[u]pon our review of Jones, we agree that Jones teaches a system or method for an independent system operator of capturing terms of the trade promotion at least including promoted product identification and sales volume for the trade promotion and storing these captured terms. However, we fail to find that Jones teaches the independent system operator to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer's payment and the amount of money owed. Jones clearly teaches that the reports provided are sent to the manufacturer to support the settlement process. However, Jones does not teach that the independent system operator performs this settlement. Therefore, we fail to find that Jones teaches all the limitations as recited in Appellants' claims 1, 23, 30, 37, 68, 74, 77, 88, 89 and 90. Therefore, we will not sustain the Examiner's rejection of these claims under 35 U.S.C. § 102 (Board of Appeals Decision, Appeal No. 2004-0199, page 14, ¶ 2) (Emphasis added).

Thus, the Board found that the Examiner misread Jones and reversed the rejection of Claims 1 to 32, 37 to 83, and 88 to 94.

After the 2004 Board Decision, Appellants eliminated the language "payment term information" from all of the pending claims taking into account the Board's broad interpretation of that language. More specifically, Appellants clarified all of the currently appealed claims to include, among other elements, storing in the independent system or system database the terms of the trade promotion including at least one of a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. Jones

does not teach the Jones audit system storing in its database these specific predetermined payment values.

Nevertheless, as discussed below, the Examiner has again misread Jones in rejecting the presently appealed claims. Additionally, as discussed below, the Examiner has misread the 2004 Board Decision in rejecting the presently appealed claims.

E. The Rejections of Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claims 1 to 32, 37 to 83, and 88 to 94 under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Schultz. These rejections are improper and should be reversed for at least the reasons set forth below.

1. The Rejections of Claims 1, 47, 68, 74, 88 and 89 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

In the September 26, 2005 office action, the Examiner states that:

As per claims 1, 47, 68, 74, 88 and 89, Jones teaches:

A method for an independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in store POS System, (9/26/05 Office Action, Page 2) (Emphasis added).

Appellants respectfully disagree. As discussed above, Jones teaches an audit system for auditing POS transactions (including transactions involving coupons or trade promotions). Jones only teaches monitoring retail POS transactions including trade promotions. Jones does not teach an independent system or independent system operator for administering a trade promotion. This important over arching difference is relevant to all of the appealed claims because Jones does not teach the administering apparatus or steps which clearly distinguish the appealed claims over Jones.

The Examiner next states that Jones teaches:

said method comprising the steps of the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion at least including promoted product identification (see Jones column 4, lines 40-67; column 11, lines 20-67) at least one of (a) a predetermined payment value of the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (see Jones column 12, lines 1-11); (9/26/05 Office Action, Pages 2-3)

This is not correct. The Examiner appears to be stating that Jones teaches somehow capturing at least one of (a) the predetermined payment value of the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. However, as discussed above, Jones does not teach that its audit system or the audit system operator capture this specific information. Additionally, the sections of Jones cited by the Examiner do not teach this. The relevant claim language, however, requires that the independent system operator capture this information. Accordingly, for at least this reason, the rejections of Claims 1, 47, 68, 88 and 89 are improper and should be reversed.

The Examiner next states that Jones teaches:

before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database (see Jones column 4, lines 40-67; column 11, lines 20-67 – column 12, lines 1-40); (9/26/05 Office Action, Page 3)

This is not correct. As discussed above, Jones does not teach that its audit system or the audit system operator stores in its database the terms of the trade promotion (which includes at least one of (a) the predetermined payment value of the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion). Additionally, the sections of Jones cited by

the Examiner do not teach this. The relevant claim language requires the independent system operator storing this predetermined payment value information in the independent system operator database. Accordingly, for at least this reason, the rejections of Claims 1, 47, 68, 74, 88 and 89 are improper and should be reversed.

The Examiner then states that Jones:

does not expressly mention "promoted product identification and predetermined payment value", but in lines 14-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be [sic] inherent to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment value of said product because these items are essential to make such determination. (9/26/05 Office Action, Page 3)

This is not correct. The Examiner reasons that while Jones does not expressly mention such predetermined payment values, Jones inherently teaches this. For Jones to inherently teach this, the missing descriptive material must be necessarily present, not merely probable or possibly present in Jones. (See *Rosco, Inc. v. Mirror Lite Co.*, 304 F.3d 1373, 1380 (Fed. Cir. Sept. 24, 2002)). As discussed above, while the Jones audit system needs an identification of the promoted product to provide the audit reports, the Jones audit system does not need at least one of (a) the predetermined payment value of the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion to provide the Jones audit reports. Furthermore, the availability of such information would provide no further benefit with respect to accomplishing the particular tasks that Jones sets out to provide.

The Examiner's reliance on the teaching in Jones starting with "by crafting the promotion contract around performance goals evidenced by incremental sales volume increases. . ." is wrong. These teachings simply mean that the manufacturer and retailer can enter into the trade promotion contract knowing that they will receive accurate information on the amount of the sales or increase in the sales of the promoted product. At best, these teachings provide only that the manufacturer and retailer can better set the predetermined payment values because they will have accurate sales information. These teachings, however, do not mean or suggest that the audit system or audit system operator in Jones needs to capture, store in its database, or use such predetermined payment values. On this point, Jones teaches nothing more than what the Appellants have already identified in the background section of the present application. That is, manufacturers and retailers enter into agreements to effect trade promotions. The problems, however, are that what the manufacturers and retailers each believe and the contract terms often are not consistent, and that the retailer will sometimes unilaterally change the contract terms. Jones provides nothing to suggest placing predetermined payment values of those agreements between the retailer and manufacturer in its database; to the contrary, such concerns are quite outside the gambit of the Jones' point of interest and focus. Accordingly, for at least this reason, the rejections of Claims 1, 47, 68, 74, 88 and 89 are improper and should be reversed.

The Examiner then states that:

Jones teaches processing the promoted product POS data in accordance with at least one of the stored (a) *a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 4, lines 41-67; column 12, lines 10-40) but Jones fails to teach facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion or that the independent system operator performs this settlement. (9/26/05 Office Action, Page 3)

The first part of this statement is not correct. The Examiner appears to be reasoning that *Jones* teaches that at least one of the stored (a) predetermined payment value of

the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion is somehow processed by the manufacturer and retailer. However, as discussed above, Jones does not teach that its audit system or the audit system operator processes the promoted product POS data in accordance with at least one of the stored (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion to determine an amount of money the manufacturer owes to the retailer for the trade promotion. The claim language requires that the independent system operator process promoted product POS data in accordance with this stored information in the independent system operator database. Accordingly, for at least this reason, the rejections of Claims 1, 47, 68, 74, 88 and 89 are improper and should be reversed.

The second part of the Examiner's statement in the above paragraph (i.e., that Jones fails to teach facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion or that the independent system operator performs this settlement) is correct and in accordance with the 2004 Board Decision.

The Examiner tries to rely on the 2004 Board Decision by reasoning that the:

Board of Appeal Decision on page 11 decided that sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion. Therefore, information of sales volume can be properly construed to be "predetermined payment value" since predetermined payment value relates to the amount of money owed by the manufacturer to the retailer for the promotion (9/26/05 Office Action, Page 34) (Emphasis added).

This is not correct and simply makes no sense. The Board construed the language "payment term information" in the previously appealed claims to be broad enough to include sales volume information. However, sales volume information (i.e., the number of promoted products sold) does not include predetermined payment values as the Examiner appears to reason. Contrary to the Examiner's reasoning, the manufacturer

will owe the retailer either (a) a predetermined payment value for each promoted product sold by the retailer during the trade promotion, or (b) a predetermined payment value for conducting the trade promotion. The independent system knowing just the sales volume of the promoted product (without more) does not and cannot provide the amounts owed by the manufacturer to the retailer. The Examiner is thus misinterpreting the 2004 Board Decision.

The Examiner also tries to rely on the 2004 Board Decision by further reasoning that the:

Board mentioned in page 11 “we find that the term “payment term information” is any information but not all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and related payment information.” The Examiner answers that “predetermined payment value” is also considered “payment term information” and therefore, Jones teaches the previous limitation. The addition of the limitation of storing the payment values “before the start of the trade promotion” does not overcome the art because Jones teaches that to activate a trade promotion there has to be an agreement between parties and said agreement of the term of said promotion and said agreement has to occur before said promotion is activated. (9/26/05 Office Action, Page 35)

This is incorrect and a misreading of the 2004 Board Decision. The Board found that the language “payment term information” was broad enough to include any information relating to the amount of money owed by the manufacturer to the retailer and related payment information. The Board ruled that payment term information was taught by Jones because Jones taught that its audit system captures sales volume information. The Board did not find that the Jones audit system taught capturing or storing (a) a predetermined payment value of the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, or (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion.

Accordingly, with regard to Claims 1 and 47, Jones does not teach:

- (1) the independent system operator, before a start of the trade promotion by the retailer, capturing terms of the trade promotion at least including promoted product identification and at least one of (a)

- a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;
- (2) the independent system operator, before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database;
 - (3) the independent system operator, processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and
 - (4) the independent system operator facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

The Examiner tries to cure the admitted deficiency (#4 above) in Jones with Schultz. However, Schultz does not cure this admitted deficiency for at least the reasons set forth below, and additionally Schultz does not cure the other deficiencies of Jones (#1, 2, and 3 above). Accordingly, the rejections of Claim 1 and 47 are improper and should be reversed.

With regard to Claim 68, Jones does not teach:

- (1) means for the independent system operator to capture and store, before a start of the trade promotion by the retailer, the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product

sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

(2) means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion; and

(3) means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion.

The Examiner tries to cure the admitted deficiency (#3 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth below, and additionally Schultz does not cure the other deficiencies of Jones (#1 and 2 above). Accordingly, the rejection of Claim 68 is improper and should be reversed.

With regard to Claim 74, Jones does not teach:

- (1) the independent system operator, before the start of the trade promotion by the retailer, storing the terms of the trade promotions at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in an independent system operator database;
- (2) the independent system operator before the start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions;

- (3) the independent system operator determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;
- (4) the independent system operator storing the amount of money the manufacturer owes the retailer in the independent system operator database;
- (5) the independent system operator, after the start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine at least a portion of the amount of money the manufacturer will owe the retailer for the trade promotions; and
- (6) the independent system operator, facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer.

The Examiner tries to cure the admitted deficiency (#6 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth below, and additionally Schultz does not cure the other deficiencies of Jones (#1 and 3 above). Additionally, Jones does not teach and the Examiner appears to ignore elements (#2, 4 and 5 above). Accordingly, the rejection of Claim 74 is improper and should be reversed.

With regard to Claim 88, Jones does not teach:

- (1) the independent system operator before a start of the trade promotions by the retailer, capturing terms of each of the trade promotions for each of the promoted products at least including promoted product identifications and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

- (2) the independent system operator before the start of the trade promotions by the retailer, storing the captured terms of each of the trade promotions in at least one independent system database;
- (3) the independent system operator processing the promoted product POS data the promoted products in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system database for said promoted products to determine amounts of money the manufacturers owe to the retailer for each of the trade promotions; and
- (4) the independent system operator facilitating the manufacturers' payments of the amounts of money owed to the retailer for each of the trade promotions.

The Examiner tries to cure the admitted deficiency (#4 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth below, and additionally Schultz does not cure the other deficiencies of Jones (#1, 2, and 3 above). Accordingly, the rejection of Claim 88 is improper and should be reversed.

With regard to Claim 89, Jones does not teach:

- (1) the independent system operator before a start of the trade promotions by the retailer, capturing terms of each of the trade promotions for each of the promoted products at least including promoted product identifications and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;
- (2) the independent system operator before the start of the trade promotions by the retailer, storing the terms of each of the trade promotions in at least one independent system database;
- (3) the independent system operator processing the promoted product POS data for each of the promoted products in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer

for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system database for said promoted products to determine amounts of money the manufacturers owe to the retailers for each of the trade promotions; and

- (4) the independent system operator facilitating the manufacturers' payments of the amounts of money owed to the retailers for each of the trade promotions.

The Examiner tries to cure the admitted deficiency (#4 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth below, and additionally Schultz does not cure the other deficiencies of Jones (#1, 2, and 3 above). Accordingly, the rejection of Claim 89 is improper and should be reversed.

2. Schultz Does Not Cure the Admitted Deficiency of Jones

The Examiner tries to cure the admitted deficiency in Jones with Schultz. The Examiner's reasoning: (a) includes a misreading of Schultz, (b) is extremely hard if not impossible to follow, and (c) to the extent understood, is not logical, and relies on improper hindsight. The Examiner's reasoning regarding Schultz is broken down into numbered sections below for ease of discussion.

- (1) However, Schultz teaches a central management firm (i.e. independent system operator) which audits and tracks all POS data obtained from retail stores to settle all rewards promotions between retailers and manufacturers.
- (2) Schultz uses the purchase records obtained from the POS data to prepare reports that are sent to manufacturers and retailers (see Schultz column 8, lines 7-25).
- (3) Schultz uses the redemption records to determine the redemption amount for reimbursing retailers and uses the purchase record to bill the manufacturers for those rewards earned and paid to consumers (see Schultz column 9, lines 5-12).
- (4) Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Schultz's central management firm (i.e. independent system operator) would store the Jones manufacturers' promotions in said firm central database (see Jones column 12, lines 1-11; see Schultz column 6,

lines 13-20) and would audit and track all POS transactions from participating retailers to empirically determine what is the established (normal) sales volume for a particular product and independently documents any incremental sales volume increase to support the promotion settlement process (see Jones column 12, lines 12-25).

- (5) Schultz would use said audit to create a report that would be sent to manufacturers and retailers (see Jones column 12, lines 20-25; Schultz column 8, lines 12-16) and would also take care of the settlement process by reimbursing retailers (see Schultz column 10, lines 35-45) and invoicing manufacturers (see Schultz column 9, lines 5-15).
- (6) The Jones' system would be motivated to allow the independent system operator (i.e. audit system processor; see Jones column 12, lines 12-25; "central management firm" see Schultz column 9, lines 7-12) to perform all the settlement between manufacturers and retailers (see Schultz column 9, lines 1-15; column 10, lines 35-44) in order to make said system more fraud proof because said manufacturers would not have to worry that said retailers would deduct more money from checks paid by said retailers to said manufacturers and said retailers would not have to worry that said manufacturers would not reimburse said retailers for said promotion as said independent system operator would take care of all the invoicing and reimbursing between said parties (9/26/05 Office Action, Pages 4 to 5).

As explained above, Schultz teaches a marketing program that replaces rebate offers and discount coupons. The retailer in the Schultz system does not provide a discount on the promoted product to the consumer associated with the Schultz marketing program. Accordingly, as discussed above, the retailer is not owed and does not receive any payment from the manufacturer for the sale of the promoted product under the Schultz marketing program.

The Examiner's first statement regarding Schultz (# 1 above) appears to be incorrect. Schultz does not teach a central management firm which audits and tracks all POS data obtained from retail stores to settle all rewards promotions between retailers and manufacturers. In Schultz, the promoted products do not appear to be promoted by the retailer pursuant to any particular agreement between the retailer and any manufacturer. The Schultz system does not settle reward promotions between the retailer and the manufacturer because the manufacturer does not owe the retailer anything for the promoted products purchased by the consumer. When a retailer

redeems a reward certificate from the consumer, that retailer gets paid for the amounts paid to the consumer, but such amounts are not tied, visa via the retailer, at that point to the purchase of promoted products. (Schultz even teaches that the promoted product can be purchased at one retailer and the consumer may redeem the reward certificate at another retailer.)

The Examiner's second statement (# 2 above) that Schultz uses the purchase records obtained from the POS data to prepare reports for the manufacturers and retailers is arguably correct, but such reports are not for the purpose of facilitating settlement between the retailer and the manufacturer.

The Examiner's third statement (# 3 above) appears to be directed to the reward certificates and not toward the purchased promoted products. Schultz does not teach using the records of the purchased promoted products to determine the amounts for reimbursing retailers, but rather for providing rewards for consumers according to the offers set forth in the reward booklets. The retailer is not paid for the purchase of the promoted products by the consumer. Moreover, Schultz discloses that records of the reward certificates are used to bill the manufacturers for those rewards earned and paid to consumers, and for auditing the amounts reimbursed to consumers for the reward certificates.

The Examiner's fourth and fifth statements (# 4 and 5 above) appear to reason that one of ordinary skill in the art would modify the Jones auditing system for trade promotions with the Schultz reward certificate processing system where the retailer is paid (instead of the Schultz promoted product processing where the consumer is paid) to provide a system that would facilitate a settlement process by reimbursing retailers for discounts given on promoted products and invoice manufacturers for such reimbursement. This combination thus modifies the Jones trade promotion auditing with the Schultz reward certificate processing. Appellants submit that one of ordinary skill in the art would not be motivated to make this combination and that this combination relies on improper hindsight. Jones teaches a way to provide audited data regarding sales and the use of coupons or non-coupon trade promotions to permit retailers/manufacturers to have secondary information that they may use to figure out or verify what they owe each other. Schultz teaches a way to permit consumers to garner

rewards based upon the purchases they have made. Appellants respectfully submit that one of ordinary skill would not be motivated (without improper hindsight) to take one piece of Schultz and paste it into Jones audit system, and that if such combination was made, the result would be different than the claimed invention. That is, if a person skilled in the art actually modified Jones with Schultz, it appears that they would come up with a Jones type audit system which is employed for auditing or reporting on Schultz type consumer reward program transactions, not for facilitating a payment by the manufacturer to the retailer.

On page 37 of the September 26, 2005 Office Action, the Examiner restates his analysis of Schultz:

the Examiner found a prior art (Schultz filed in 1989) that teaches an independent system operator that stores manufacturers' promotions terms in said independent system operator database and compare said terms with monitor POS data from participating retailers to settle all transactions between said retailers and said manufacturers (see Schultz column 9, lines 5-10; column 10, lines 35-45; column 8, lines 7-25).

Appellants believe that this statement is restating the Examiner's fourth and fifth statements (#4 and #5 above). This statement regarding Schultz is clearly incorrect because Schultz does not compare the terms of the promotion with POS data from retailers to settle transactions between the retailers and manufacturers. Schultz uses the POS data to determine if participating consumers are entitled to reward certificates based on their purchases of promoted products.

The Examiner's sixth statement (# 6 above) also relies on improper hindsight in attempting to provide a reason to modify the Jones audit system or system operator to perform the settlement between manufacturers and retailers. The Examiner reasons that this would make the Jones audit system "more fraud proof because said manufacturers would not have to worry that said retailers would deduct more money from checks paid by said retailers to said manufacturers and said retailers would not have to worry that said manufacturers would not reimburse said retailers for said promotion as said independent system operator would take care of all the invoicing and reimbursing between said parties." This reasoning, to the extent understood by Appellants, clearly relies on improper hindsight.

The Examiner cannot use "hindsight reconstruction to pick and choose among isolated disclosures in the prior art" to re-create the claimed invention. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). The mere fact that the prior art can be combined to achieve the present invention is not enough to demonstrate obviousness. *In re Laskowski*, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989). Rather, the prior art, in its entirety, must provide the teaching to make the combination obvious. *In re Gorman*, 18 U.S.P.Q.2d 1885 (Fed. Cir. 1991). "If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant the patent." *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the claimed invention. *ATD Corp v. Lydall, Inc.*, 48 U.S.P.Q. 2d 1321, 1329 (Fed. Cir. 1998). Virtually all inventions are combinations of old elements (citing *Environmental Designs, Ltd. v. Union Oil Co.*, 218 U.S.P.Q. 865, 870 (Fed. Cir. 1983)). When the Examiner fails to explain how the skilled artisan would have been motivated by the prior art to make the claimed combination, the court infers that the obviousness determination has been made in hindsight, which is impermissible. *In re Rouffet*, *supra*, (citing *In re Gorman*, 18 U.S.P.Q. 2d 1885, 1888 (Fed. Cir. 1991)). Moreover, the invention must not be used as a blueprint for reconstructing the invention from the prior art. *Sensonics, Inc. v. Aerosonic Corp.*, 38 U.S.P.Q.2d 1551 (Fed. Cir. 1996).

Appellants respectfully submit that the Examiner is using improper hindsight to combine Jones and Schultz at for at least that reason the rejections of Claims 1, 47, 68, 74, 88 and 89 should be reversed.

Accordingly, for the above reasons, it is respectfully submitted that the rejections of Claims 1, 47, 68, 74, 88 and 89 are improper and should be reversed.

3. **The Rejection of Dependent Claims 2 to 22, 48 to 67, 69 to 73, and 75 to 76 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed**

Dependent Claims 2 to 22, 48 to 67, 69 to 73, and 75 to 76 respectfully depend from and include the elements of Claims 1, 47, 68, 74, 88 and 89 and the additional elements in each of those claims. For that reason alone, the rejection of dependent Claims 2 to 22, 48 to 67, 69 to 73, and 75 to 76 are improper and should be reversed.

For brevity, Appellants will not separately discuss each of these dependent claims. Rather, below are certain of these dependent claims including elements which are clearly not disclosed in Jones.

With regard to Claims 2 and 48, Jones does not teach the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database (wherein those terms include the stored predetermined payment values as in Claim 1 and 47) to independently verify those terms of the trade promotion.

With regard to Claim 3 and 49, Jones does not teach the independent system operator enabling the retailer to change the terms of the trade promotion (wherein those terms include the stored predetermined payment values as in Claim 1 and 47) prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database.

With regard to Claim 4 and 50, Jones does not teach the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion (wherein those terms include the stored predetermined payment values as in Claim 1 and 47) stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion.

With regard to Claims 18 and 63, Jones does not teach facilitating the manufacturer's payment to the retailer includes paying the retailer using an electronic funds transfer.

With regard to Claims 19 and 64, Jones does not teach the independent system operator sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer.

With regard to Claims 20 and 65, Jones does not teach the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer.

With regard to Claim 73, Jones does not teach means to consolidate the promoted product POS data for a plurality of trade promotions for the manufacturer and the paying means aggregating payments owed to the retailer by the manufacturer for a plurality of trade promotions.

Accordingly, for the above reasons, it is respectfully submitted that the rejections of dependent Claims 2 to 22, 48 to 67, 69 to 73, and 75 to 76 are improper and should be reversed.

4. The Rejection of Claims 23 and 24 to 29 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claim 23 essentially using the same analysis as described above with regard to Jones and Schultz on Pages 11 to 12 of the 9/26/05 Office Action. However, for the reasons described above, Jones does not teach:

- (1) means for the independent system operator to capture and store before a start of the trade promotion by the retailer, the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;
- (2) means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product

POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion; and

- (3) means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion.

The Examiner tries to cure the admitted deficiency (#3 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth above, and additionally Schultz does not cure the other deficiencies of Jones (#1 and 2 above). Accordingly, the rejection of Claim 23 is improper and should be reversed.

Dependent Claims 24 to 29 depend from and include the elements of Claim 23 and the additional elements in each of those claims. For that reason alone, the rejection of dependent Claims 24 to 29 are improper and should be reversed. For brevity, Appellants will not separately discuss each of these dependent claims.

5. The Rejection of Claims 30 and 31 to 32 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claim 30 essentially using the same analysis as described above with regard to Jones and Schultz on Pages 13 to 15 of the 9/26/05 Office Action. However, for the reasons described above, Jones does not teach:

- (1) the independent system operator before a start of the trade promotions by the retailer, storing the terms of the trade promotions at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in an independent system operator database;

- (2) the independent system operator before a start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions;
- (3) the independent system operator determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion stored in the independent system operator database;
- (4) the independent system operator storing the amount of money the manufacturer owes the retailer in the independent system operator database;
- (5) the independent system operator after a start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine at least a portion of the amount of money the manufacturer will owe the retailer for the trade promotions; and
- (6) the independent system operator facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer.

The Examiner tries to cure the admitted deficiency (#6 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth above, and additionally Schultz does not cure the other deficiencies of Jones (#1 and 3 above).

Additionally, Jones and Schultz do not teach element #2 above. Jones and Schultz do not disclose providing any access by the retailer and manufacturer to the independent system operator database to independently verify the terms of the trade promotion (wherein the terms include at least one of (a) a predetermined payment value

the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in an independent system operator database).

Further, Jones and Schultz do not teach element #4 above. Jones and Schultz do not disclose the independent system operator storing the amount of money the manufacturer owes the retailer for the trade promotion in the independent system operator database.

Still further, Jones and Schultz do not teach element #5 above. Jones and Schultz do not disclose after the start of the trade promotion by the retailer, providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotion to determine at least a portion of the amount of money the manufacturer will owe the retailer for the trade promotion.

Accordingly, the rejection of Claim 30 is improper and should be reversed.

Dependent Claims 31 to 32 depend from and include the elements of Claim 30 and the additional elements in each of those claims. For that reason alone, the rejection of dependent Claims 31 to 32 are improper and should be reversed. For brevity, Appellants will not separately discuss each of these dependent claims.

6. The Rejection of Claims 37 and 38 to 46 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claim 37 essentially using the same analysis as described above with regard to Jones and Schultz on Pages 16 to 17 of the 9/26/05 Office Action. However, for the reasons described above, Jones does not teach:

(1) an independent system having a processor and an electronic database accessible by the processor which are adapted to

(i) before a start of the trade promotion by the retailer capture and store the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and

(b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion, after the start of the trade promotion by the retailer,

(ii) process the collected promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the electronic database to determine an amount of money the manufacturer owes to the retailer for the trade promotion, and

(iii) facilitate the manufacturer's payment of the amount of money determined to be owed to the retailer for the trade promotion; and

The Examiner tries to cure the admitted deficiency (#1 (iii) above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth above, and additionally Schultz does not cure the other deficiencies of Jones (#1(i) and 1(ii) above). Accordingly, the rejection of Claim 37 is improper and should be reversed.

Dependent Claims 38 to 46 depend from and include the elements of Claim 37 and the additional elements in each of those claims. For that reason alone, the rejection of dependent Claims 38 to 46 are improper and should be reversed. For brevity, Appellants will not separately discuss each of these dependent claims.

7. The Rejection of Claims 77 and 78 to 83 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claim 77 essentially using the same analysis as described above with regard to Jones and Schultz on Pages 27 to 28 of the 9/26/05 Office Action. However, for the reasons described above, Jones does not teach:

- (1) the independent system operator before a start of the trade promotion by the retailer, capturing terms of the trade promotion including

- i. at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion, and
 - ii. link codes for associated discounts if the trade promotion is an electronic discount trade promotion;
- (2) the independent system operator before the start of the trade promotion by the retailer storing said captured terms of the trade promotion in an independent system operator database;
- (3) the independent system operator processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and
- (4) the independent system operator facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

The Examiner tries to cure the admitted deficiency (#4 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth above, and additionally Schultz does not cure the other deficiencies of Jones (#1, 2 and 3 above).

In particular, regarding element 1(ii) above, the 2004 Board Decision specifically found that Jones does not teach capturing the terms of the trade promotion including link codes for associate discounts if any of the trade promotions are electronically discount trade promotions. The Examiner somewhat acknowledges this on page 27 of the 9/26/05 Office Action, but reasons that Schultz "teaches customers card that enable

the retailer/manufacture to issue electronic discounts to said customers at the point of sale based upon said customer linking to promotions. (see Schultz column 8, lines 39-41; column 4, lines 64-67)." (9/26/06 Office Action, page 27). However, these sections of Schultz (as well as the rest of Schultz) do not teach this. The Examiner, nevertheless, then goes on to reason that:

it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Jones would use Schultz cards to enable retailers/manufacturers to issue electronic discounts to consumers at the point of sale terminal. Jones would be motivated to include customer cards that are linked to promotions in his trade promotion system in view that said cards would identify the customers which said identification would be used to better target advertisements and promotions to said customers. (9/26/06 Office Action, pages 27-28).

Appellants' quite frankly do not understand the Examiner's statements in the above paragraph or how those statements relate to the elements of Claim 77 which requires the independent system operator before a start of the trade promotion by the retailer, capturing terms of the trade promotion including link codes for associated discounts if the trade promotion is an electronic discount trade promotion, and storing the captured terms in an independent system operator database. This is illogical at least because Schultz teaches away from providing discounts to the consumer at the retailer level according to its marketing program.

Accordingly, the rejection of Claim 77 is improper and should be reversed.

Dependent Claims 78 to 83 depend from and include the elements of Claim 77 and the additional elements in each of those claims. For that reason alone, the rejection of dependent Claims 78 to 83 are improper and should be reversed. For brevity, Appellants will not separately discuss each of these dependent claims.

8. The Rejection of Claims 90 and 91 to 94 under 35 U.S.C. 103(a) Over Jones and Schultz are Improper and Should be Reversed

The Examiner rejected Claim 90 essentially using the same analysis as described above with regard to Jones and Schultz on Pages 30 to 33 of the 9/26/05 Office Action. However, for the reasons described above, Jones does not teach:

- (1) independent system operator before a start of the trade promotion by the retailer capturing terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;
- (2) the independent system operator before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database;
- (3) the independent system operator before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion;
- (4) the independent system operator before the start of the trade promotion by the retailer, enabling the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion and storing any changed terms of the trade promotion in the independent system operator database;
- (5) the independent system operator before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion;
- (6) the independent system operator processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion,

- and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion;
- (7) the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion; and
 - (8) the independent system operator facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

The Examiner tries to cures the admitted deficiency (#8 above) in Jones with Schultz. Schultz does not cure this admitted deficiency for at least the reasons set forth above, and additionally Schultz does not cure the other deficiencies of Jones (# 1, 2, and 6 above).

Additionally, Jones and Schultz do not teach element #3 above. Jones and Schultz do not disclose providing any access by the retailer and manufacturer to the independent system operator database to independently verify the terms of the trade promotion (wherein the terms include at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in an independent system operator database).

Jones and Schultz do not teach element #4 above. Jones and Schultz do not disclose the independent system operator before the start of the trade promotion by the retailer, enabling the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion, and storing any changed terms of the trade promotion in the independent system operator database.

Jones and Schultz do not teach element #5 above. Jones and Schultz do not disclose the independent system operator before the start of the trade promotion by the

retailer, enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion.

The Examiner reasons that for “a trade promotion to be activated, there has to be an agreement between retailers and manufacturers and the moment that there is a change in the terms of said trade promotion, said change would create a new promotion with new terms.” (9/25/05 Office Action, Pages 31-32). This reasoning does not support the conclusion that Jones audit system enables a retailer to change the terms in the independent system database, storing the retailer changes in the independent system database, and the enabling the manufacturer to determine if the retailer changed any of the terms in the independent system database.

Jones and Schultz do not teach element #7 above. Jones and Schultz do not disclose the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion.

Accordingly, the rejection of Claim 90 is improper and should be reversed.

Dependent Claims 91 to 94 depend from and include the elements of Claim 90 and the additional elements in each of those claims. For that reason alone, the rejection of dependent Claims 91 to 94 are improper and should be reversed. For brevity, Appellants will not separately discuss each of these dependent claims.

F. There was a Long Felt and Unresolved Need for the Present Invention

Appellants submitted a Declaration under 37 C.F.R. §1.132 of Richard J. Windish which is attached hereto in the Evidence Appendix. This declaration and more importantly the Exhibits accompanying the declaration indicate that the present invention of each of the presently pending claims satisfies at least a 10 year old long-felt need that was not solved by others. As set forth in the Declaration, efficient and effective trade promotion administration systems and methods did not exist prior to the invention of Claims 1 to 32, 37 to 83, and 88 to 94. For example, the 1993 ECR industry survey accompanying the Declaration demonstrates that, among other

problems, the trade promotion industry suffered trade promotion administration problems. For years following the 1993 ECR study, the various additional reports explained in the undisputed Declaration continued to recognize problems with trade promotion efficiency and effectiveness. The reports of continued problems with efficiency and effectiveness in trade promotions are objective evidence of the unavailability of a tenable solution for trade promotion administration. These reports also illustrate that others in the industry tried without success to solve this problem. The presently claimed invention solved this problem.

The Examiner considered this Declaration and admitted that there was a long felt need to solve the problems solved by the present invention. However, the Examiner takes the position that this long felt need was solved by Jones or in the alternative the combination of Jones and Schultz.

The Examiner answers that is true [sic] that there was a long-felt need to solve the problem of trade promotion and that was the reason that Jones filed an application for a patent on June 7, 1995 to solve said need. The difference between Jones and the Applicant's claimed invention is that Jones' independent system operator is not doing all the settlement between parties. However, the Examiner found a prior art (Schultz filed in 1989) that teaches an independent system operator that stores manufacturers' promotions terms in said independent system operator database and compare said terms with monitor POS data from participating retailers to settle all transactions between said retailers and said manufacturers (see Schultz column 9, lines 5-10; column 10, lines 35-45; column 8, lines 7-25). The Jones' system would be motivated to allow the independent system operator (i.e. audit system processor; see Jones column 12, lines 12-25; "central management firm" see Schultz column 9, lines 7-12) to perform all the settlement between manufacturers and retailers (see Schultz column 9, lines 1-15; column 10, lines 35-44) in order to make said system more fraud proof and trustworthy because said manufacturers would not have to worry that said retailers would deduct more money from checks paid by said retailers to said manufacturers and said retailers would not have to worry that said manufacturers would not reimburse said retailers for said promotion as said independent system operator would take care of all the invoicing and reimbursing between said parties, as taught by Schultz (9/26/05 Office Action, Pages 37-38) (Emphasis added in bold).

The Examiner first reasons that the difference between Jones and the claimed invention is that Jones system is not doing all the settlement between parties. However, as discussed above, this is only one difference. Jones proposes an audit system for trade promotions that does not perform many of the steps or provide many of the apparatus of the presently claimed invention as discussed above.

The Examiner further reasons that Schultz teaches a system that stores manufacturers' promotions terms in the system database and compares the terms with monitored POS data from participating retailers to settle all transactions between the retailers and the manufacturers. As discussed above, the Schultz system does not compare the terms for a promoted product with monitored POS data from participating retailers to settle transactions between the retailers and the manufacturers.

Moreover, contrary to the Examiner's position, the Jones audit system would not be motivated to allow the audit system to perform all the settlement between manufacturers and retailers. As explained in the Declaration, for trade promotions, the proposed Jones system passively recorded point of sale transactions, stored the data, and provided reports of the transactions to both retailers and manufacturers. The Jones system for trade promotions was complete at the reporting stage. The trade promotion audit reports were provided to the retailers and manufacturers to help them resolve any payment disputes and involved no additional processes. The proposed Jones solution for such systems is essentially independently obtaining the retailer point of sale data from the retailer and providing that independently obtained POS data to the manufacturer. This does not solve the problems set forth in the Exhibits to the Declaration.

The Examiner did not dispute the statement in the Declaration that the Jones system for trade promotions has never been commercially successful. The Examiner has not pointed to any commercial evidence that the Jones system was commercialized for trade promotions and solved the problem. Appellants are not aware of any commercial embodiment of the Jones system for coupons or for trade promotions. The Examiner has not pointed to any evidence that the combination of the Jones and Schultz systems was commercialized for trade promotions and solved the

problem. Appellants are not aware of any commercial embodiment of the combination of Jones and Schultz system for coupons or for trade promotions.

The evidence submitted in the Declaration was at least in part after Jones and Schultz which indicates that Jones and Schultz did not solve the problem. After the present invention and the filing date of the present application, the assignee of the present application continued the development of the present commercial system which implements the presently claimed invention. The commercial system was substantially completed in late 2002. Prior to the present invention, and prior to commercial rollout of the present invention in late 2002 and early 2003, which is well after Schultz and Jones, the need for an efficient and effective system or method for trade promotion administration was clearly expressed in the food industry as set forth in the Declaration. This evidence is undisputed by the Examiner.

Accordingly, there was a long felt, but unresolved need for the trade promotion administration systems and methods set forth in Claims 1 to 32, 37-83, and 88-94, the rejections of these claims was improper and the Board should reverse the rejections.

VIII. CONCLUSION

The Examiner has failed to establish a *prima facie* case of obviousness with respect to the rejections of Claims 1 to 32, 37-83, and 88-94. Accordingly, Appellants respectfully submit that the rejections of pending Claims 1 to 32, 37-83, and 88-94, as being obvious is erroneous in law and in fact and should therefore be reversed by this Board. Additionally, Appellants respectfully request that the Board rule that the presently appealed claims are not anticipated by and not obvious in view of the references of record.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

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Dated: February 2, 2006

CLAIMS APPENDIX

Claim 1 (previously presented): A method for an independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database;

after the start of the trade promotion by the retailer, collecting from the retailer product POS data from at least one in-store POS system of the retailer;

filtering the product POS data using the promoted product identification stored in the independent system operator database to obtain promoted product POS data;

processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

Claim 2 (previously presented): The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion.

Claim 3 (previously presented): The method of Claim 1, which further includes the steps of the independent system operator: enabling the retailer to change the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database.

Claim 4 (previously presented): The method of Claim 3, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion.

Claim 5 (previously presented): The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of promoted products sold during the trade promotion.

Claim 6 (previously presented): The method of Claim 5, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 7 (previously presented): The method of Claim 6, wherein the retailer and manufacturer use an internet to access the stored terms of the trade promotion in the independent system operator database, the number of promoted products sold during the trade promotion and the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 8 (previously presented): The method of Claim 1, wherein the step of storing the captured terms of the trade promotion includes storing the terms of the trade promotion in at least one predefined table in the independent system operator database.

Claim 9 (previously presented): The method of Claim 8, wherein the step of storing the captured terms of the trade promotion includes creating a UPC list for the promoted products.

Claim 10 (previously presented): The method of Claim 9, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer.

Claim 11 (previously presented): The method of Claim 10, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list.

Claim 12 (previously presented): The method of Claim 1, wherein the retailer has a plurality of stores with in-store POS systems and the step of collecting the product POS data includes collecting product POS data from the plurality of stores and consolidating all of the collected product POS data.

Claim 13 (previously presented): The method of Claim 12, wherein the step of filtering the product POS data includes the step of generating a table of UPC codes for products active in the trade promotion.

Claim 14 (previously presented): The method of Claim 12, wherein the step of filtering the product POS data includes the step of comparing the product POS data to the table of UPC codes to obtain the promoted product POS data.

Claim 15 (previously presented): The method of Claim 1, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances.

Claim 16 (previously presented): The method of Claim 15, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the same product for a period prior to the beginning of the trade promotion.

Claim 17 (previously presented): The method of Claim 1, wherein processing the promoted product POS data in accordance with the stored terms of the trade promotion in the independent system operator database includes creating at least one settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 18 (previously presented): The method of Claim 1, wherein the step of facilitating the manufacturer's payment to the retailer includes paying the retailer using an electronic funds transfer.

Claim 19 (previously presented): The method of Claim 1, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer.

Claim 20 (previously presented): The method of Claim 1, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer.

Claim 21 (previously presented): The method of Claim 1, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer.

Claim 22 (previously presented): The method of Claim 21, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer.

Claim 23 (previously presented): A system for enabling an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said system comprising:

means for the independent system operator to capture and store before a start of the trade promotion by the retailer, the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

means for the independent system operator to collect from the retailer, product POS data from at least one in-store POS system of the retailer after the start of the trade promotion by the retailer;

means for the independent system operator to filter the product POS data using the promoted product identification to obtain promoted product POS data for the promoted product;

means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion; and

means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion.

Claim 24 (previously presented): The system of Claim 23, wherein the retailer has a plurality of stores with in-store POS systems and the collection means collects product POS data from the plurality of retailer stores and consolidates the product POS data into a consolidated file for transfer to the filtering means.

Claim 25 (previously presented): The system of Claim 24, wherein the filtering means includes means for the independent system operator to compare the product POS data to a list of UPCs for the trade promotion to obtain the promoted product POS data.

Claim 26 (previously presented): The system of Claim 25, where the determining means includes means for verifying that the promoted product POS data is within acceptable tolerances for the promoted product.

Claim 27 (previously presented): The system of Claim 23, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer.

Claim 28 (previously presented): The system of Claim 27, wherein the reporting means reports the promoted product POS data via the internet.

Claim 29 (previously presented): The system of Claim 23, wherein the determining means consolidates the promoted product POS data for a plurality of products for the manufacturer.

Claim 30 (previously presented): A method for an independent system operator to administer a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotions by the retailer, storing the terms of the trade promotions at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in an independent system operator database;

before a start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions;

after the start of the trade promotions by the retailer, collecting from the retailer the product POS data during the trade promotions from at least one in-store POS system of the retailer;

filtering the product POS data based on the stored promoted product identification to obtain promoted product POS data;

storing the promoted product POS data in the independent system operator database;

determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by

the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion stored in the independent system operator database;

storing the amount of money the manufacturer owes the retailer in the independent system operator database;

after a start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine at least a portion of the amount of money the manufacturer will owe the retailer for the trade promotions; and

facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer.

Claim 31 (previously presented): The method of Claim 30, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer.

Claim 32 (previously presented): The method of Claim 31, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer.

Claims 33-36 (canceled).

Claim 37 (previously presented): A system for administering a trade promotion for a promoted product between a retailer and a manufacturer, said system comprising:

an independent system having a processor and an electronic database accessible by the processor which are adapted to, before a start of the trade promotion by the retailer, capture and store the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion, after the start of the trade promotion by the retailer, to collect from the retailer promoted product POS data for the promoted product of the trade promotion from the retailer, to process the collected promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the electronic database to determine an amount of money the manufacturer owes to the retailer for the trade promotion, and to facilitate the manufacturer's payment of the amount of money determined to be owed to the retailer for the trade promotion;

a retailer system in communication with the independent system, having a processor adapted to, after the start of the trade promotion by the retailer, collect promoted product POS data for the promoted product from a plurality of retailer stores,

to consolidate the promoted product POS data, and to transfer the promoted product POS data for the trade promotion to the independent system; and

a manufacturer system in communication with the independent system.

Claim 38 (previously presented): The system of Claim 37, wherein the independent system is adapted provide the retailer system and the manufacturer system access to the independent system electronic database to independently verify the stored terms of the trade promotion, to determine the number of promoted products sold during the trade promotion and to determine the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 39 (previously presented): The system of Claim 38, wherein the independent system provides the manufacturer system and the retailer system access to the independent system through the internet.

Claim 40 (previously presented): The system of Claim 37, wherein the independent system is adapted to generate a table of UPC codes that are active in the trade promotion and to transfer said table of UPC codes to the retailer system.

Claim 41 (previously presented): The system of Claim 40, wherein the retailer system is adapted to collect product POS data for all of the products the retailer sells and to use the table of UPC codes to filter the product POS data to obtain promoted product POS data for the promoted product.

Claim 42 (previously presented): The system of Claim 37, wherein the independent system is adapted to verify that the promoted product POS data for the promoted product is within acceptable tolerances for the promoted product.

Claim 43 (previously presented): The system of Claim 37, wherein the independent system is adapted to consolidate all of the promoted product POS data for a plurality of promoted products for the manufacturer.

Claim 44 (previously presented): The system of Claim 43, wherein the independent system is adapted to process the consolidated promoted product POS data for a plurality of retailers for the manufacturer.

Claim 45 (previously presented): The method of Claim 1, wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS system of at least one retailer store.

Claim 46 (previously presented): The method of Claim 1, wherein the retailer has a plurality of retailer stores with in-store POS system, and wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS systems in said plurality of retailer stores.

Claim 47 (previously presented): A method for an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database;

after the start of the trade promotion by the retailer, receiving from the retailer promoted product POS data for the promoted product of the trade promotion from at least one in-store POS system of the retailer;

processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion stored in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

Claim 48 (previously presented): The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion.

Claim 49 (previously presented): The method of Claim 47, which further includes the step of the independent system operator: enabling the retailer to change the stored terms of the promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the changed terms of the trade promotion in the independent system operator database.

Claim 50 (previously presented): The method of Claim 49, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion.

Claim 51 (previously presented): The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion.

Claim 52 (previously presented): The method of Claim 51, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 53 (previously presented): The method of Claim 52, wherein the retailer and manufacturer use an internet to access the stored terms of the trade promotion in the independent system operator database, the number of promoted products sold during the trade promotion and the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 54 (previously presented): The method of Claim 47, wherein the step of storing the captured terms of the trade promotion includes storing the terms of the trade promotion in at least one predefined table in the independent system operator database.

Claim 55 (previously presented): The method of Claim 54, wherein the step of storing the captured terms of the trade promotion includes creating a UPC list for the promoted products.

Claim 56 (previously presented): The method of Claim 55, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer.

Claim 57 (previously presented): The method of Claim 56, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list.

Claim 58 (previously presented): The method of Claim 47, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores.

Claim 59 (previously presented): The method of Claim 58, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores.

Claim 60 (previously presented): The method of Claim 47, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances.

Claim 61 (previously presented): The method of Claim 60, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion.

Claim 62 (previously presented): The method of Claim 60, wherein processing the promoted product POS data in accordance with the terms of the trade promotion includes creating at least one settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion.

Claim 63 (previously presented): The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator paying the retailer using an electronic funds transfer.

Claim 64 (previously presented): The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer.

Claim 65 (previously presented): The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer.

Claim 66 (previously presented): The method of Claim 47, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer.

Claim 67 (previously presented): The method of Claim 66, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer.

Claim 68 (previously presented): A system for enabling an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said system comprising:

means for the independent system operator to capture and store, before a start of the trade promotion by the retailer, the terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

means for the independent system operator to collect from the retailer, promoted product POS data for the promoted product from at least one in-store POS system of the retailer after the start of the trade promotion by the retailer;

means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion ; and

means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion.

Claim 69 (previously presented): The system of Claim 68, wherein the retailer has a plurality of stores with in-store POS systems and a retailer network which collects product POS data from the plurality of in-store POS systems in the plurality of stores and filters the consolidated product POS data to obtain consolidated promoted product POS data, and wherein the collecting means is adapted to receive the consolidated promoted product POS data from the retailer network.

Claim 70 (previously presented): The system of Claim 68, where the determining means includes means for verifying that the promoted product POS data is within acceptable tolerances for the promoted product.

Claim 71 (previously presented): The system of Claim 68, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer.

Claim 72 (previously presented): The system of Claim 68, wherein the reporting means reports the promoted product POS data via an internet.

Claim 73 (previously presented): The system of Claim 68, wherein the determining means consolidates the promoted product POS data for a plurality of trade promotions for the manufacturer and the paying means aggregates payments owed to the retailer by the manufacturer for said plurality of trade promotions.

Claim 74 (previously presented): A method for an independent system operator to administer a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotions by the retailer, storing the terms of the trade promotions at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in an independent system operator database;

before the start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions;

receiving from the retailer promoted product POS data during the trade promotions from at least one in-store POS system of the retailer;

storing the promoted product POS data in the independent system operator database;

determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion ;

storing the amount of money the manufacturer owes the retailer in the independent system operator database;

after the start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine at least a portion of the amount of money the manufacturer will owe the retailer for the trade promotions; and

facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer.

Claim 75 (previously presented): The method of Claim 74, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer.

Claim 76 (previously presented): The method of Claim 75, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer.

Claim 77 (previously presented): A method for independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion including an identification of the retailer, an identification of the manufacturer, a trade promotion type, a UPC Code for the promoted product, at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion , and link codes for associated discounts if the trade promotion is an electronic discount trade promotion;

before the start of the trade promotion by the retailer, storing said captured terms of the trade promotion in an independent system operator database;

after the start of the trade promotion by the retailer, receiving from the retailer promoted product POS data for said trade promotion from at least one in-store POS system of the retailer;

processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

Claim 78 (previously presented): The method of Claim 77, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion.

Claim 79 (previously presented): The method of Claim 77, which further includes the step of the independent system operator: enabling the retailer to change at least one of the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database.

Claim 80 (previously presented): The method of Claim 79, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed any of the terms of the trade promotion.

Claim 81 (previously presented): The method of Claim 77, which further includes the step of consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer.

Claim 82 (previously presented): The method of Claim 77, which further includes the step of processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer.

Claim 83 (previously presented): The method of Claim 77, wherein the step of capturing terms of the trade promotion further includes capturing special payment terms.

Claims 84-87 (canceled).

Claim 88 (previously presented): A method for an independent system operator to administer a plurality of trade promotions for a plurality of promoted products involving a plurality of manufacturers and a retailer having a plurality of stores with in-store POS systems, said method comprising the steps of the independent system operator:

before a start of the trade promotions by the retailer, capturing terms of each of the trade promotions for each of the promoted products at least including promoted product identifications and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

before the start of the trade promotions by the retailer, storing the captured terms of each of the trade promotions in at least one independent system database;

after the start of the trade promotions by the retailer, receiving from the retailer consolidated promoted product POS data including promoted product POS data for each of the promoted products from each of the in-store POS systems of the retailer;

processing the promoted product POS data the promoted products in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system database for said promoted products to determine amounts of money the manufacturers owe to the retailer for each of the trade promotions; and

facilitating the manufacturers' payments of the amounts of money owed to the retailer for each of the trade promotions.

Claim 89 (previously presented): A method for an independent system operator to administer a plurality of trade promotions for a plurality of promoted products involving a plurality of manufacturers and a plurality of retailers where each retailer has a plurality of stores with in-store POS systems, said method comprising the steps of the independent system operator:

before a start of the trade promotions by the retailer, capturing terms of each of the trade promotions for each of the promoted products at least including promoted product identifications and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion;

before the start of the trade promotions by the retailer, storing the terms of each of the trade promotions in at least one independent system database;

after the start of the trade promotions by the retailer, receiving from the retailer consolidated promoted product POS data for each of the promoted products from each of the in-store POS systems of the retailers;

processing the promoted product POS data for each of the promoted products in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system database for said promoted products to determine amounts of money the manufacturers owe to the retailers for each of the trade promotions; and

facilitating the manufacturers' payments of the amounts of money owed to the retailers for each of the trade promotions.

Claim 90 (previously presented): A method for an independent system operator to administer trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

before a start of the trade promotion by the retailer, capturing terms of the trade promotion for the promoted product at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion

before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database;

before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion;

before the start of the trade promotion by the retailer, enabling the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion and storing any changed terms of the trade promotion in the independent system operator database;

before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion;

after the start of the trade promotion by the retailer, receiving from the retailer promoted product POS data for the promoted product of the trade promotion from at least one in-store POS system of the retailer;

processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion;

verifying that the promoted product POS data is within acceptable tolerances;

enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion; and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

Claim 91 (previously presented): The method of Claim 90, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion.

Claim 92 (previously presented): The method of Claim 90, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores.

Claim 93 (previously presented): The method of Claim 92, wherein the step of receiving the promoted POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores.

Claim 94 (previously presented): The method of Claim 90, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion.

EVIDENCE APPENDIX

See attached Declaration of Richard J. Windish. The Examiner entered and considered this evidence in the September 26, 2005 final office action.



Appl. No. 09/385,489

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Thomas J. Sullivan, et al.
Appl. No.: 09/385,489
Filed: August 30, 1999
Title: SYSTEM AND METHOD FOR ADMINISTERING PROMOTIONS
Art Unit: 3622
Examiner: D. Lastra
Docket No.: 0110754-629

DECLARATION UNDER 37 C.F.R. §1.132 OF RICHARD J. WINDISH

I, Richard J. Windish, hereby state as follows:

1. I am currently employed as Vice President, eSettlement Operations, of NCH Marketing Services, Inc., the assignee of the above-referenced patent application.
2. NCH Marketing Services, Inc., is a subsidiary of the Valassis Company.
3. NCH Marketing Services, Inc., among other things, is in the business of coupon processing and trade promotion administration.
4. I have worked for NCH Marketing Services, Inc. for 6 years.
5. I have worked in the food industry for over 46 years.
6. The food industry generally includes retail sales of food and other products such as packaged goods.
7. More specifically, I have worked at one of the largest supermarket companies in the United States for 29 years and at one of the larger consumer packaged goods companies in the United States for two years. At these companies, I

have worked in various positions that exposed me to the industry problems described later in this declaration.

8. I am one of the named inventors on and I have read the above-referenced patent application.

9. I have reviewed the February 7, 2005 U.S. patent office action for the above-referenced patent application.

10. I have reviewed Claims 1 to 32, 37 to 83, and 88 to 94 as amended in the response to the February 7, 2005 office action in the above-referenced patent application.

11. I have reviewed U.S. Patent No. 5,832,458 to Jones, U.S. Patent Application Publication No. 2003/0195806 to Willman et al., and U.S. Patent No. 5,918,211 to Sloane.

12. For at least the reasons set forth below, I believe that prior to the present invention, there was a long-felt and unresolved need in the food industry for systems and methods for administering trade promotions as set forth in each of Claims 1 through 94 in the response to the February 7, 2005 office action for the above-referenced patent application.

13. One type of product promotion is known in the food industry as a consumer promotion. Consumer promotions often involve redeemable discount coupons. Consumer promotions using coupons have existed for over 50 years. In a typical coupon promotion, the manufacturer:

- (a) selects the product to be promoted,
- (b) sets the terms of the promotion including the monetary value of the coupon and the time period for the promotion,

- (c) establishes the promotion region,
- (d) facilitates the printing of the coupons, and
- (e) facilitates the distribution of the coupons directly to the consumers.

A consumer uses the coupon at the time of the purchase of the promoted product typically at a retailer to receive the discount on the price of the product promoted.

14. In a typical coupon promotion, to obtain reimbursement, the retailer directly or indirectly (i.e., through an agent or clearinghouse) submits the redeemed coupon for processing and reimbursement. The retailer essentially acts as a conduit between the manufacturer and the consumer for honoring and processing the manufacturer's discount to the consumer.

15. The processed physical coupons provide the manufacturer a reasonable basis for paying the retailer for honoring and processing the manufacturer's discount to the consumer.

16. Another type of product promotion is known in the food industry as a trade promotion. A trade promotion involves promotion funds the manufacturer pays to the retailer for promoting a designated product and does not involve coupons. These trade promotions often require a retailer to advertise the promoted product. Such trade promotions have existed in the food industry for over 20 years. Manufacturers and retailers generally negotiate or collaborate on the nature and terms of the trade promotions. Each trade promotion is sometimes referred to as a deal in the food industry.

17. In a first form of trade promotion, under the agreed upon terms of the trade promotion, the retailer provides a discount on the promoted product to the consumer in the form of a reduced product price for the promoted product. The consumer receives the discount by simply purchasing the product (or in certain

instances by presenting a frequent shopper card or other identification when purchasing the promoted product).

18. In a second form of trade promotion, under the agreed upon terms of the trade promotion, the retailer promotes the product such as by prominently placing the product at the end of an aisle in the retailer's store. In this form, the retailer may or may not charge the consumer full price for the promoted product.

19. In these first two forms, the manufacturer pays the retailer based on the actual number of promoted products sold by the retailer during the period of the trade promotion based on the agreed upon terms of the trade promotion rather than on a number of coupons accepted or submitted by the retailer as in a coupon-based consumer promotion. The retailer receives a predetermined payment value or fee from the manufacturer for each promoted product sold by the retailer during the period of the trade promotion.

20. In a third form of trade promotion, the manufacturer pays the retailer a predetermined payment value or fee for conducting the trade promotion. The number of promoted products sold by the retailer during the period of the trade promotion is typically provided to the manufacturer as evidence that the retailer conducted the trade promotion according to the contract terms of the trade promotion.

21. In a fourth form of trade promotion, the manufacturer pays the retailer a combination of (i) a predetermined payment value for conducting the entire trade promotion, and (ii) a predetermined payment value for each of the promoted products sold during the trade promotion.

22. In trade promotions, the manufacturers do not have to facilitate the printing, distribution, or processing of coupons.

23. In trade promotions, the consumers do not have to obtain, carry, present, or otherwise handle or use coupons.

24. In trade promotions, the retailers do not have to accept, verify, or process coupons.

25. In trade promotions, since there is no coupon, the manufacturer does not have a processed physical coupon to rely on to verify the appropriate payment to the retailer for the promoted product sold during the trade promotion. Thus, trade promotions inherently create a significant verification problem for manufacturers.

26. Prior to the present invention, the known systems and methods for administering trade promotions were generally inadequate to resolve this verification problem for at least the reasons discussed below.

27. For over 15 years prior to the present invention, to implement a trade promotion, a manufacturer usually contacted a retailer approximately a few weeks prior to the start of the proposed trade promotion and provided the retailer with proposed contract terms for the trade promotion on a deal sheet. The manufacturer usually sent or provided the deal sheet manually or electronically (such as by mail, facsimile, or e-mail) to the retailer. The retailer's representative evaluated the proposed terms of the trade promotion on the deal sheet and (a) accepted the trade promotion as is, (b) negotiated different terms for the trade promotion with the manufacturer, or (c) rejected the terms of the trade promotion outright. The negotiation, if any, was usually conducted by a manufacturer's representative and a retailer's representative in person or over the telephone. During the negotiation, usually the retailer's representative wrote notes on the deal sheet regarding the changes to the proposed terms of the trade promotion (such as the price of the product) discussed and changed during the negotiation.

28. If the manufacturer's representative and the retailer's representative reached an agreement on the trade promotion, each representative usually maintained their own copy of the deal sheet (which included their own individual notes on the agreed upon terms including any changed terms). In some instances, the manufacturer's representation simply relied on his or her memory for the changed terms. After the negotiation, the retailer and the manufacturer each had what they believed to be the agreed upon contract terms entered into their own manual or automated systems for tracking such trade promotions.

29. Prior to the present invention, although some attempts at sharing data may have been made by manufacturers and retailers, the manufacturer and retailer tracking methods for trade promotions operated completely independently of one another, and no unified or integrated communication or verification of the agreed upon contract terms of the trade promotion typically existed between these two separate tracking methods.

30. Prior to the present invention, the manufacturer and the retailer had no reliable, convenient, and cost effective independent method for verifying that the other party correctly understood and would employ the agreed upon contract terms of the trade promotion.

31. In some instances, prior to the start of the trade promotion, the retailer would desire to change one or more terms of the trade promotion such as the start date of the trade promotion for weather reasons. In such instances, the retailer often did not contact the manufacturer to re-negotiate the terms of the trade promotion such as the start date or to notify the manufacturer of the retailer's change.

32. The separate manufacturer and retailer tracking systems did not enable the retailer and the manufacturer to check or verify any such types of changes made to the terms of the trade promotion by the other party.

33. Prior to the present invention, this was a significant problem because the manufacturer and the retailer often had different terms recorded for the trade promotion and because the terms such as the start date of the promotion were sometimes changed on a unilateral basis.

34. Moreover, prior to the present invention, the manufacturer and the retailer sometimes had different recorded terms for the trade promotion. The retailers had control of all of the point of sale data and thus control of the promotion redemption. The manufacturer could only make estimates for resulting point of sale data. Processed point of sale data often resulted in discrepancies. Such discrepancies were difficult to resolve and often remained unresolved.

35. Prior to the present invention, to obtain payment for conducting a trade promotion, a retailer used mostly manual and sometimes automated systems to determine the amount of money the manufacturer owed the retailer based on the terms of the trade promotion the retailer had in its manual or automated system.

36. Such systems were not accessible by the manufacturer and did not enable the manufacturer to determine if the retailer used the negotiated or agreed upon terms of the trade promotion (or at least the terms the manufacturer understood to be the agreed upon terms) to determine the amount of money the manufacturer owed the retailer for the trade promotion.

37. Prior to the present invention, the retailer generally either: (1) generated an invoice for the calculated amount and sent it to the manufacturer for payment; or (2) deducted the calculated amount from any amounts the retailer owed the manufacturer for the promoted product or sometimes for a completely different product. In this second scenario, the retailer would write the deductions on the invoices received from the manufacturer for products and pay the manufacturer reduced amounts on

those invoices. These deductions on the manufacturer invoices by the retailer are known in the food industry as invoice deductions.

38. Prior to the present invention, the manufacturer processed the retailer invoice or invoice deduction (and reduced payment). Usually, the manufacturer merely accepted the invoice or reduced payment notice (and reduced payment).

39. Prior to the present invention, in many instances, the retailer made invoice deductions without notifying the manufacturer.

40. Prior to the present invention, in the known procedures and systems for administering trade promotions, the manufacturer did not have the ability to readily or independently verify:

- (a) the retailer's calculated performance total due to the retailer,
- (b) the number of promoted products sold by the retailer during the trade promotion period, or
- (c) the amount of the discounts given to the consumers for the promoted products during the trade promotion.

41. Prior to the present invention, manufacturers also had no way of monitoring results of the trade promotion during or as the trade promotion occurred.

42. Prior to the present invention, known systems thus provided little reliability for the administration of trade promotions handled by the manufacturer.

43. Additionally, prior to the present invention, in the known procedures and systems for administering trade promotions, the retailer spent a significant number of man-hours creating and processing:

- (a) the point of sale movement data,
- (b) invoices for the manufacturer, and

(c) invoice deductions.

44. Prior to the present invention, retailers sometimes failed to track a trade promotion altogether.

45. Prior to the present invention, retailers sometimes failed to track all of the products involved in all of the trade promotions.

46. Prior to the present invention, these problems with administering trade promotions were compounded by the sheer volume of trade promotions implemented by manufacturers and retailers.

47. A single manufacturer may have tens of thousands of trade promotions pending at one time, in part because they deal with many retailers.

48. A single manufacturer may have hundreds of thousands of trade promotions in a year, in part because they deal with many retailers.

49. A single retailer may have thousands of trade promotions pending at one time, in part because they deal with many manufacturers.

50. A single retailer may have tens of thousands of trade promotions pending in a year, in part because they deal with many manufacturers.

51. Prior to the present invention, as further evidenced below, various manufacturers, retailers, and others have suggested that someone should solve these problems, but all such attempts have been unsuccessful.

52. For instance, U.S. Patent 5,832,458 to *Jones* recognized problems with consumer promotions and also suggested that the proposed system could be used to solve some of the problems with trade promotions.

53. More specifically, *Jones* proposed a system for electronically independently auditing retailer sales transactions through retailer point of sale systems. *Jones's* proposed an in-store system for independently collecting, processing and storing retail sales transaction data including coupon data at each retailer store. The *Jones* system independently directly captured specified information (regarding each in-store transaction including any transaction involving a coupon) by monitoring communications between the individual scanners or cash registers in a store and the in-store processor. The *Jones* system periodically provided the retail sales transaction data including coupon data it collected to manufacturers and retailers.

54. For trade promotions, the proposed *Jones* system passively recorded point of sale transactions, stored the data, and provided reports of the transactions to both retailers and manufacturers. The *Jones* system for trade promotions was complete at the reporting stage. The trade promotion audit reports were provided to the retailers and manufacturers to help them resolve any payment disputes and involved no additional processes.

55. Thus, *Jones* recognized a need for better trade promotion administration systems. However, the proposed *Jones* solution for such systems is essentially independently obtaining the retailer point of sale data from the retailer and providing that independently obtained data to the manufacturer.

56. The *Jones* system for trade promotions has never been commercially successful.

57. After the present invention and the filing date of the present application, NCH Marketing Services, Inc. continued the development of the present commercial system which implements the presently claimed invention. The commercial system was substantially completed in late 2002.

58. Prior to the present invention, and prior to commercial rollout of the present invention in late 2002 and early 2003, among the various problems with trade promotions, the need for an efficient and effective system or method for trade promotion administration had been clearly expressed in the food industry numerous other times.

59. In 1993, Kurt Salmon Associates prepared a report titled "Efficient Consumer Response" ("ECR") (attached hereto behind Tab A) for the Uniform Code Council (UCC), Grocery Manufacturers of America (GMA), Food Marketing Institute (FMI), National Food Brokers Association (NFBA), and the America Meat Institute (AMI). The 1993 ECR report was a ground breaking study and was widely disseminated in the food industry. Page 2 of the 1993 ECR report recognized the then existing general need for food industry members to focus on "efficiency of the total grocery supply system, rather than the efficiency of individual components" to reduce total system costs. Page 2 of the 1993 ECR report also recognized the need to replace "old paradigms of win/lose trading relationships with win/win mutually profitable business alliances."

60. More specifically, page 4 of the 1993 ECR report recognized the complexity of trade promotions and expressly recommended maximizing the total system efficiency of trade and consumer promotions. The report made this recommendation in part because the typical retailer "may have 7,000-8,000 [trade promotion] deals on file at any one time, leading to numerous misunderstandings over deal terms" which accounted for 78 percent of the invoice deductions (generally described above). (See 1993 ECR report page 81). As described above, these invoice

deductions were due in part to inefficient independent manual retailer and manufacturer trade promotion administration procedures.

61. Five years later, in 1998, Cannondale Associates published a report titled "Trade Promotion Spending & Merchandising 1998 Industry Study" ("TPSM") (attached hereto behind Tab B) regarding trade promotion management. Page 10 of the 1998 TPSM report expressly states that "Trade Promotion inefficiency is the #1 manufacturer issue with 90% of manufacturer participants rating it as very/extremely important." Page 10 of the 1998 TPSM report also stated that "after several years of trend tracking, Trade Promotion remains the top issue while many other issues have declined in importance." Page 14 of the 1998 TPSM report further recognized that trade promotions are nearly the largest expenditure for manufacturers, but "it is surprising that manufacturers aren't more effectively addressing this area."

62. The 1998 TPSM report further recognized that trade promotion process ineffectiveness accounts at least in part for why "84% [of manufacturers] do not feel they are getting a good value for their trade \$" and why "manufacturers believe trade promotion is a poor investment." (See 1998 TPSM report, chart on page 15).

63. Page 15 of the 1998 TPSM report indicates that the five most significant problems with trade promotions for manufacturers included deductions and inadequate analysis.

64. In 2000, Cannondale Associates published a follow-up report titled "Trade Promotion Spending & Merchandising 2000 Industry Study" ("TPSM") (attached hereto behind Tab C). Page 13 of the 2000 TPSM report again recognized that "trade promotion inefficiency remains the #1 manufacturer issue with 90% of manufacturer participants rating it as very/extremely important and 69% of retailer participants rating it as very/extremely important."

65. Page 27 of the 2000 TPSP report also indicates that most of the manufacturers did not feel that they were effective in analyzing and evaluating trade promotion productively. This is at least in part because they did not have a suitable system for administering the trade promotions.

66. In 2003, Cannondale Associates published another follow-up report titled "Trade Promotion Spending & Merchandising 2003 Industry Study" ("TPSM") (attached hereto behind Tab D). Page 7 of the 2003 TPSP report recognized that "since 1994, trade promotion inefficiency has ranked at the top of the list of industry issues for manufacturers, and among the top issues for retailers."

67. Page 7 of the 2003 TPSP report further noted that to address this concern, manufacturers made "substantial investments in systems or tools to improve planning, tracking, analysis, and control" of trade promotions but that these systems have only "given managers the illusion of gaining control." These manufacturer systems did not include the retailers and did not include an independent system for administering the trade promotions. Accordingly, manufacturers have tried without success to address a clearly and nearly universally held long felt need for a better trade promotion administration system.

68. In 2000, Prime Consulting prepared a report titled "Invoice Accuracy: Industry Survey & Benchmarks, 2000 Report" (attached hereto behind Tab E) for Grocery Manufacturers of America (GMA). The 2000 Invoice Accuracy report compiled data regarding invoice deduction practice from 35 leading food and beverage companies, with an average of \$2.3 billion in annual invoiced sales. (See 2000 Invoice Accuracy report pages 1 and 3). Page 21 of the 2000 Invoice Accuracy study reported that participants found that promotions were responsible for 68 percent of deductions, the largest percentage of invoice deductions.

69. The 2000 Invoice Accuracy report on page 31 shows that companies reported a startling 31 percent increase in human resources to combat problems with invoice deductions. Despite these expenditures and this manpower, page 16 of the 2000 Invoice Accuracy report also stated that participants "realize they have a long way to go before achieving it [invoice accuracy]." This further illustrates and verifies the long standing existence and recognition of the above-described problems with invoice deductions for trade promotions.

70. In 2002, Prime Consulting prepared a report titled "Invoice Accuracy: Industry Survey & Benchmarks, 2002 Report" (attached hereto behind Tab F) for Grocery Manufacturers of America (GMA). Page 2 of the 2002 Invoice Accuracy report recognized that pricing and promotions continued to be the highest percentage of invoice deductions at 65 percent. Page 12 of the 2002 Invoice Accuracy reports that in addition to promotion complexity, invoice administration problems were still expressed as the need to improve communications, increase data synchronization, and improve information systems, among other process improvements.

71. Page 20 of the 2002 Invoice Accuracy report shows that on average 45 percent of invoice deductions were invalid. Page 20 of the 2002 Invoice Accuracy report noted that some companies automatically accepted invoice deductions from customers below a certain dollar amount to keep invoice deduction administrative costs at a minimum. Page 20 of the 2002 Invoice Accuracy report also shows that despite process improvement measures, facilities costs and overhead costs still increased from the previous survey. This report reiterates a long existing invoice deduction problem for trade promotions.

72. In 2000, AC Nielsen prepared a report titled the "Tenth Annual Survey of Trade Promotion Practices 2000" ("TPP") (attached hereto behind Tab G). Page 69 of the 2000 TPP report states that trade promotion efficiency and effectiveness are

recognized by both manufacturers and retailers as the number one critical issue under "Key Issues Faced in Today's Market – 2000".


73. Page 70 of the 2000 TPP report also reflects that manufacturers and retailers both ranked trade promotion efficiency and effectiveness at the top of a list of the "Most Important Critical Issues" in trade promotions.

74. The present invention has been and continues to be commercially implemented by manufacturers and retailers at a steady pace since the initial introduction of the commercial embodiment of the present invention in late 2002 and 2003.

75. Based on these reports and my experience with trade promotions, I believe that there has been a failure by others to find an effective solution for trade promotion administration.

76. Accordingly, I submit that prior to the present invention, there was a long felt, but unresolved need for the trade promotion administration systems and methods set forth in Claims 1 through 94 of the response to the February 7, 2005 office action.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made upon information and belief are believed to be true; and further that these statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the patent.

Signature: 
Name: Richard J. Windish
Date Signed: 7/5/05

A vertical strip of a collage featuring various food items like pizza, pasta, and bread, interspersed with circular stamps that read "ONE CENT".

THE PROMOTION
PARADOX
. . . MYTH OR REALITY ?

[Handwritten signature]

EXECUTIVE SUMMARY

RECOMMENDED ACTIONS

Several clear implications emerge from these principles—basic recommendations we would encourage all companies to consider in order to join the ranks of smart marketers for whom the notion of the promotion paradox is little more than a myth.

By focusing on mutual benefits, manufacturers and retailers can achieve win-win outcomes and superior performance.

To achieve these outcomes, we recommend three activities for all organizations.



① BENCHMARK YOUR PROCESSES:

The goal should be to develop an integrated promotion management cycle with appropriate identification of needs/gaps.

The organizational processes need to be fully aligned with responsibilities consistently managed throughout the planning/execution/control/analysis cycle. While this does not mean that one group must have primary responsibility for all areas, there should be consistent oversight.



OVERVIEW/FINDINGS

TRADE PROMOTION...#1 ISSUE

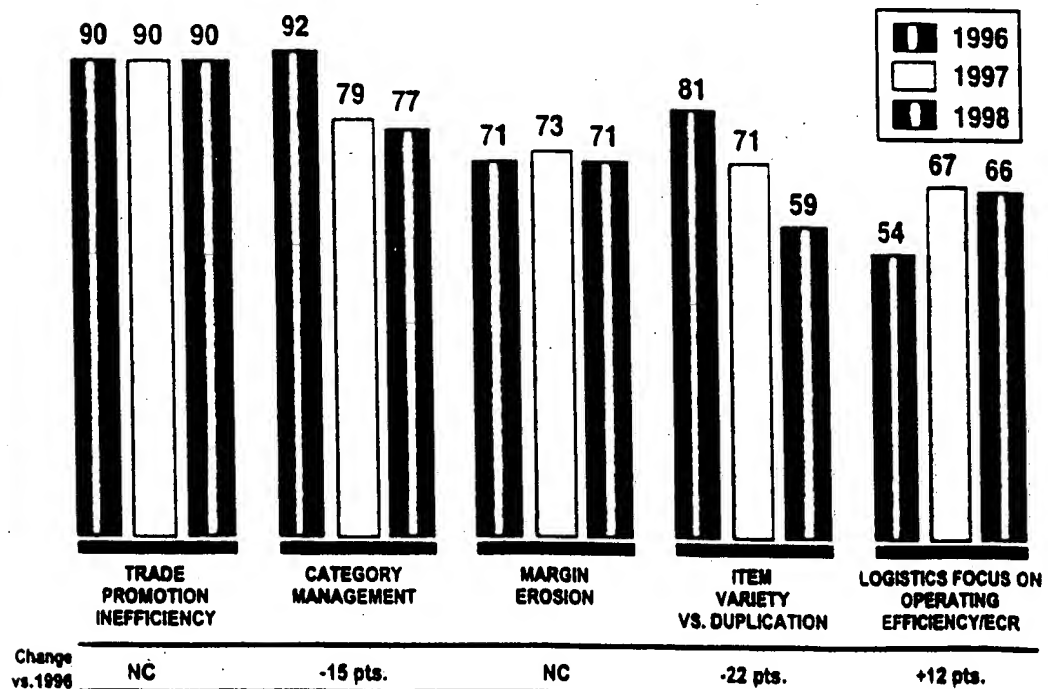
The results of the 1998 Trade Promotion Study confirm that Trade Promotion inefficiency is the #1 manufacturer issue with 90% of manufacturer participants rating it as very/extremely important. What is remarkable, however, is that after several years of trend tracking, Trade Promotion remains the top issue while many other issues have declined in importance including category management and item variety vs. duplication.

"Improving Trade Promotion efficiency is our #1 issue." - Manufacturer

"When it's the #2 line item on our P&L, we'd better understand where it's going and what we're getting in return for our dollars." - Manufacturer

"It is puzzling that we've made so little progress on this issue. Not only over the past few years but over the past decade." - Manufacturer

% MANUFACTURERS RATING "VERY / EXTREMELY IMPORTANT"



OVERVIEW / FINDINGS

TRADE PROMOTION TRENDS

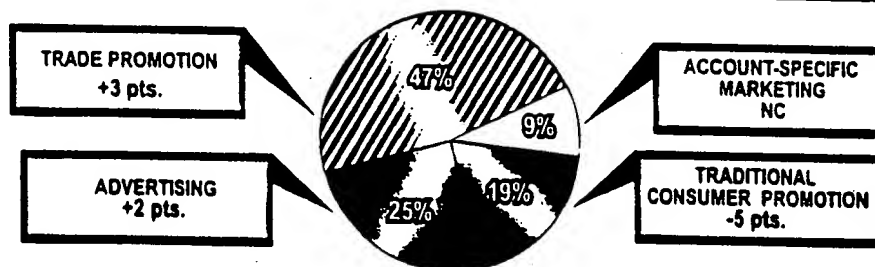
TOTAL DOLLARS INCREASING

The components of marketing budgets have shifted substantially over the past year. Trade Promotion has increased to 47% (+3 pts.) of the overall budget while consumer promotion has declined by five points to 19%. Account-specific marketing funds appear to have been sourced from traditional consumer promotion vs. Trade Promotion as expected.

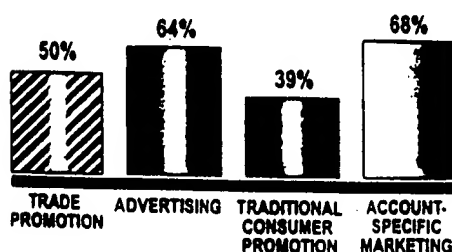
"While Trade Promotion represents close to half of our budget, the amount that we're spending through the customer is closer to 60%."
- Manufacturer

"Account-specific marketing, whether it's traditional trade or consumer, is what we desire to help build our franchise."
- Retailer

CURRENT % OF MARKETING BUDGET (POINT CHANGE VS. 1997)



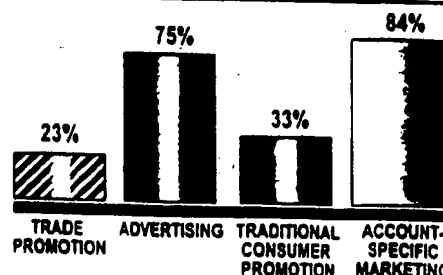
PAST 5-YEAR CHANGES IN MARKETING EXPENDITURE % Indicating Budget Increase



Pt. Chg.
vs. 1997

-3	+2	+10	-1
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NEXT 5-YEAR CHANGES IN MARKETING EXPENDITURE % Indicating Budget Increase



-2	+1	+2	-10
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OVERVIEW/FINDINGS

TRADE PROMOTION TRENDS

DISCRETIONARY FUNDS CONTINUE TO GROW

The mix within the Trade Promotion budget continues to shift as expected. There has been a considerable groundswell toward discretionary funds now comprising 37% of the Trade Promotion budget (+4 points versus prior year). Off-invoice continues to decline as a percent of the overall fund.

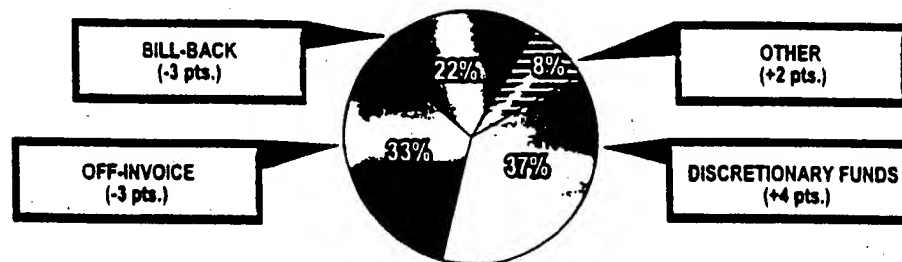
The five year outlook projects a continuation of past trends, with discretionary funds being the primary driver.

The use of discretionary funds allows greater sales latitude in the overall expenditure of funds. To ensure that this is accountable discretion, we anticipate greater focus on pay-for-performance activities.

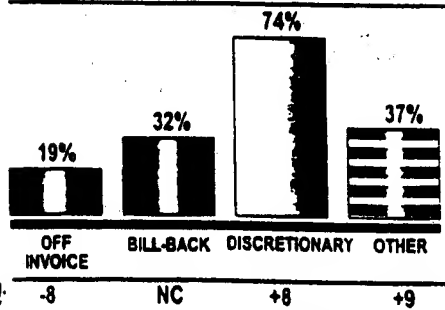
"At whose discretion are these dollars?" - Retailer

"If we don't do our homework I don't care if it's discretionary or off-invoice or account-specific." - Manufacturer

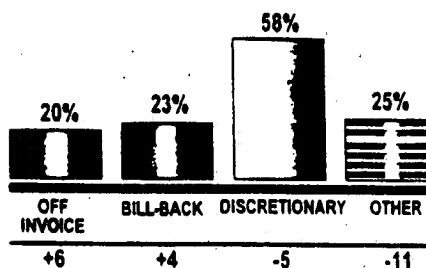
CURRENT % OF TRADE PROMOTION EXPENDITURE (POINT CHANGE VS. 1997)



PAST 5-YEAR CHANGES IN TRADE PROMOTION EXPENDITURE % Indicating Budget Increase



NEXT 5-YEAR CHANGES IN TRADE PROMOTION EXPENDITURE % Indicating Budget Increase



13

OVERVIEW/FINDINGS

TRADE PROMOTION TRENDS

PERCENT OF GROSS SALES

Trade Promotion represents the second largest line item on consumer packaged goods manufacturers' P&Ls, trailing only cost of goods sold.

Given the magnitude of this expenditure, which is significant for companies of all sizes, it is surprising that manufacturers aren't more effectively addressing this area.

AVERAGE CPG COMPANY P&L (Index)

NET SALES	100
-----------	-----

-COST OF GOODS SOLD	(53)
---------------------	------

GROSS PROFIT	47
--------------	----

-TRADE PROMOTION	(13)
------------------	------

-ADVERTISING	(7)
--------------	-----

-CONSUMER / OTHER	(7)
-------------------	-----

-OTHER SG&A	(8)
-------------	-----

PROFIT (BEFORE TAX)	12
---------------------	----

PROFIT (AFTER TAX)	7
--------------------	---

TRADE PROMOTION RANGE

% OF SALES	% OF SAMPLE
>20 %	15 %
>15-20 %	13 %
>10-15 %	31 %
>5-10 %	33 %
0-5 %	8 %

NOTE: Chart on right depicts range of trade promotion expenditures as a percent of sales among manufacturers. The mean is 13 percent.

OVERVIEW/FINDINGS

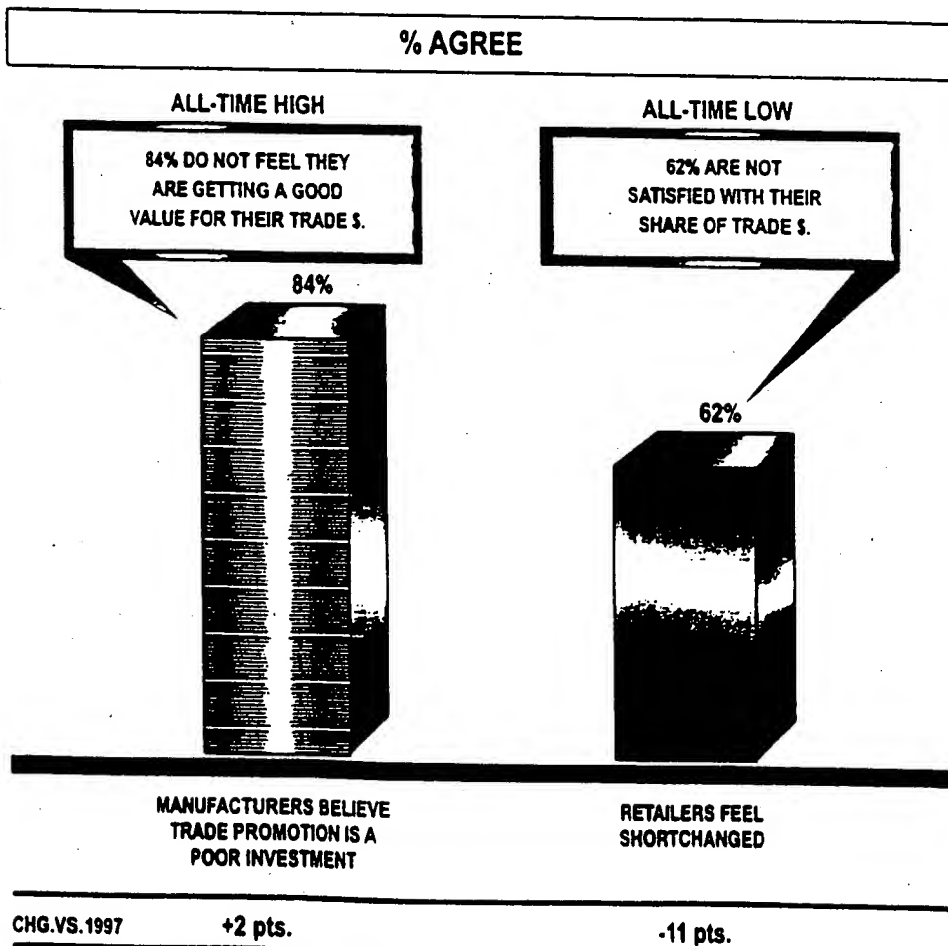
TRADE PROMOTION PERFORMANCE

DISSATISFACTION

Trade Promotion performance continues to be problematic for both manufacturers and retailers. However, retailer dissatisfaction dropped by 11 points to 62%—an all time low—perhaps indicating that the combination of traditional trade dollars and account-specific marketing dollars is increasing their share of funding and support.

Manufacturer concern is at an all time high with 84% believing that they are not getting a good value for their Trade Promotion dollar.

Both manufacturers and retailers need to work together to develop credible solutions and create win-win outcomes.



OVERVIEW/FINDINGS

PROBLEMS REMAIN

WHY ISN'T TRADE PROMOTION PERFORMANCE IMPROVING?

While significant changes have occurred as indicated on the table below, in many cases Pyrrhic victories have been achieved where losses have exceeded the gains.

There is complete agreement between manufacturers and retailers on the top five most significant changes that have occurred over the past two years: better analysis, longer term planning, reduction of OI, account-specific marketing and pay-for-performance.

While there is agreement on the changes, there is significant disagreement on the problems that exist and the impact of changes that have already occurred, be they beneficial or detrimental. Manufacturers believe that deductions, non-pass-through, non-performance, inadequate analysis and lack of consumer integration are the five critical problems. Retailers believe that insufficient funding, poor planning, reduction in OI, poor execution and diverting are the most significant problems in Trade Promotion. There is absolutely no common ground in problem identification.

MANUFACTURERS		RETAILERS	
MOST SIGNIFICANT CHANGES (TOP 5)			
1) BETTER ANALYSIS	58%	1) REDUCTION OF OI	64%
2) LONGER-TERM PLANNING	43%	2) PAY-FOR-PERFORMANCE	49%
3) REDUCTION OF OI	41%	3) LONGER-TERM PLANNING	41%
4) INTEGRATION WITH ACCT-SPEC MARKET	40%	4) INTEGRATION WITH ACCT-SPEC MARKET	35%
5) PAY-FOR-PERFORMANCE	31%	5) BETTER ANALYSIS	32%
MOST SIGNIFICANT PROBLEMS (TOP 5)			
1) DEDUCTIONS	57%	1) INSUFFICIENT FUNDS	56%
2) NON-PASS-THROUGH	48%	2) POOR PLANNING	42%
3) NON-PERFORMANCE	43%	3) REDUCTION OF OI	38%
4) INADEQUATE ANALYSIS	42%	4) POOR EXECUTION	37%
5) LACK OF CONSUMER INTEGRATION	35%	5) DIVERTING	25%

OVERVIEW/FINDINGS

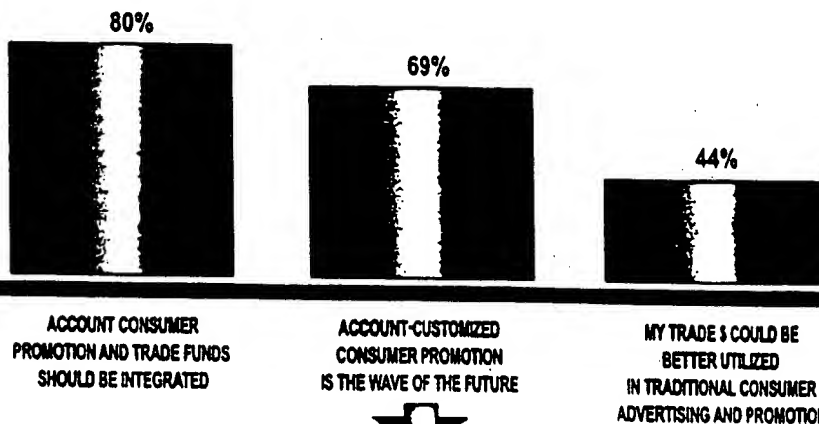
ASM IS NOT A PANACEA

THE HONEYMOON MAY BE OVER

The chart below supports our hypothesis that smart marketers are recognizing the benefits of better integration of funds and programs. While not all manufacturers believe that trade or customer promotion is the answer, they do believe that integrated funds and account-customized promotions will become increasingly important.

However, while 69% of manufacturers believe that account-customized consumer promotion is the wave of the future, this fell by 11 points versus year ago.

MANUFACTURER % AGREE



PT. CHANGE
VS. 1997

+1

-11

-6

22

OVERVIEW/FINDINGS

LEADERSHIP... RETAILERS

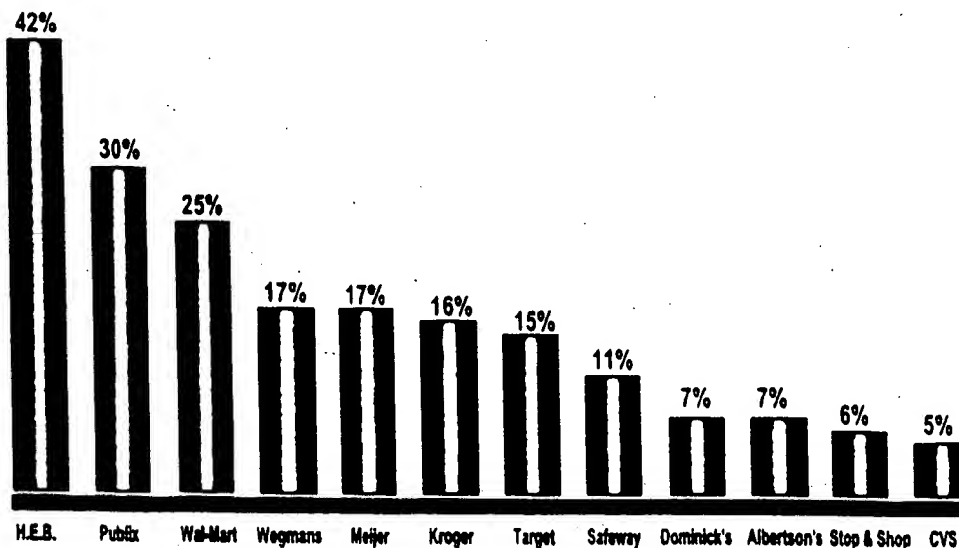
WHO'S WHO IN UTILIZING TRADE FUNDS EFFECTIVELY

H.E.B.'s dominance continues among all retailers when asked the question: "Which retailers are industry leaders in utilizing trade funds most effectively?" We continue to see strong performance among both regional and national chains with Publix and Target picking up considerable ground.

For the first time, we have seen a major drug retailer on our "Who's Who" list among retailers with CVS checking in at five percent.

"There's nothing proprietary about good Trade Promotion practices; it's just that some retailers practice what they preach." - Manufacturer

WHO'S WHO AMONG RETAILERS
% OF MANUFACTURERS RATING IN TOP 3



PL Chg. vs. 1997	+3	+9	+2	+3	+4	+4	+6	+3	+1	NR*	NR*	NR*
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*Not rated in 1997

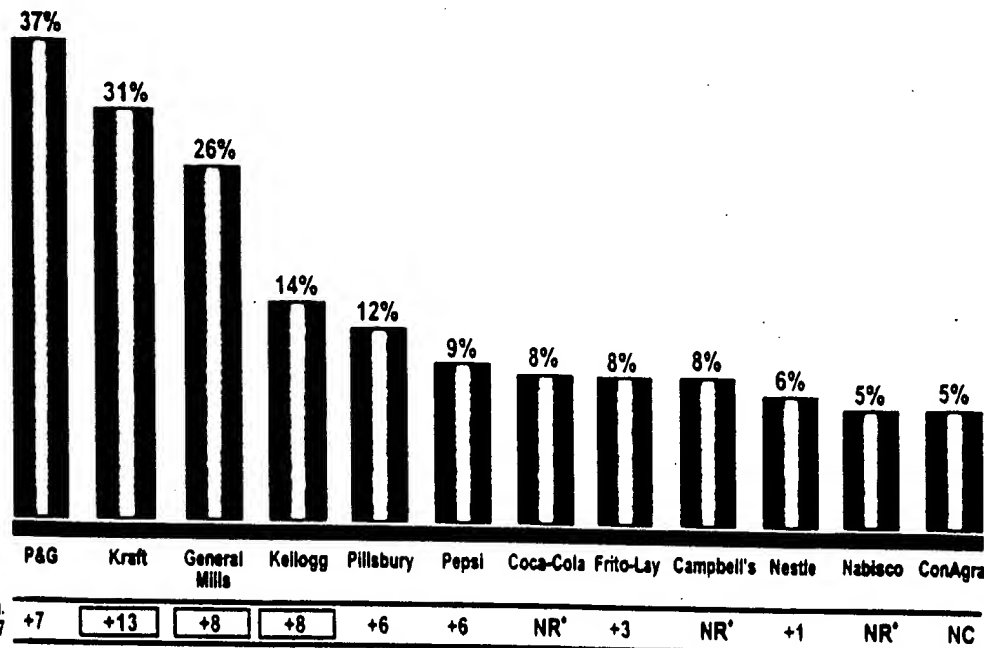
OVERVIEW/FINDINGS

LEADERSHIP... MANUFACTURERS

WHO'S WHO IN UTILIZING TRADE FUNDS EFFECTIVELY

While retailers indicate P&G is still #1, it no longer is in a class by itself. The strong contenders that were waiting in the wings have now moved into position. Kraft and General Mills are clearly perceived to be in near lock-step with P&G on Trade Promotion management.

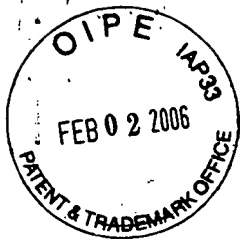
WHO'S WHO AMONG MANUFACTURERS % OF RETAILERS RATING IN TOP 3



*Not rated in 1997

RELATED PROCEEDINGS APPENDIX

See attached copy of 2004 Board Decision (Appeal No. 2004-0199).



The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

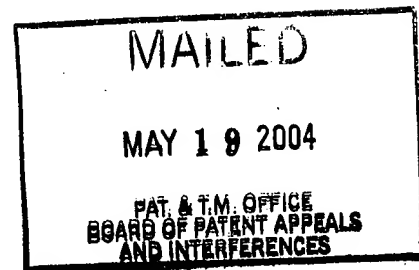
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS J. SULLIVAN, RICHARD J. WINDISH,
DORR H. LEWRIGHT, JOSEPH M. TRATTNER, SUZANNE K. ARENSON,
GEORGE COLUNGA, KATHY S. HACKETT and JOICA C. CAMPBELL

Appeal No. 2004-0199
Application No. 09/385,489

HEARD: May 4, 2004



Before KRASS, FLEMING, and DIXON, **Administrative Patent Judges.**

FLEMING, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-94, all the claims pending in the instant application.

Invention

The present invention relates to a system and method for administering a trade promotion for a product involving a manufacturer and retailer. See page 1 of Appellants' specification. Trade promotions are where the manufacturer pays promotion funds to the retailer to give incentive to the retailer to promote product or products produced by the manufacturer. See

page 2 of Appellants' specification. One of the more prevalent type of trade promotions is known in the industry as or referred to as "scan-based trade promotions" or "scan-pay trade promotions." They are referred to as "scan-based" or "scan-pay" because the performance of the promotion can be tracked by reviewing the participating stores' conventional point-of-sale system data or information. See page 3 of Appellants' specification. Either manually, or sometimes with systems support, the retailer uses the data collected by the point-of-sale system to determine the amount of money the manufacturer owes the retailer under the terms of the scan-based promotion. See page 8 of Appellants' specification. There are several problems with this system of administering scan-based trade promotions. The main problem for the retailer is that the retailer may wait a significant period of time for reimbursement. The retailer must also spend a significant number of man-hours processing the paperwork for the manufacturer. The main problem for the manufacturer is that the manufacturer has no effective way of verifying the retailer's paperwork. See pages 9 and 10 of Appellants' specification.

Referring to Figure 1, the system of the present invention includes a retailer system 20, a manufacturer system 22 and an

independent recording, tracking, reporting, monitoring, verifying and clearing or settling system 24 including communicating with a financial institution 25 through an electronic funds transfer system. See page 19 of Appellants' specification. Referring now to Figure 2A, manufacturers enter into agreement with the operator of the independent system to become participating manufacturers, as indicated by line 64, and retailers enter into agreements with the operator of the independent system to become participating retailers, as indicated by line 66. See page 24 of Appellants' specification. A manufacturer generates a promotion and presents the proposed promotion to a participating retail buyer, as indicated in block 84. See page 30 of Appellants' specification. The account administrator accesses the system from an account administrator workbench 36 and uses a promotion data entry process to enter the proposed promotion into the database server 32 at block 88. See page 31 of Appellants' specification.

Referring now to Figure 2C, on the day when the promotion becomes active, the in-store point-of-sale system stores all of the information regarding the purchase of the promoted product, the price of the promoted product and the discount. The stored

information is referred to as promoted product POS data. See pages 41 and 42 of Appellants' specification.

Referring to Figure 2D, on a periodic basis, the retailer system 20 collects the product POS data from the retailer's in-store POS system 54. The data collected from each store's POS system is stored in and also called an item movement file 56. See page 42 of Appellants' specification. The retailer's main processor 40 consolidates or combines all of the retrieved item movement files 56 into a consolidated item movement file 60, as indicated in block 222. As indicated in block 228, the retailer system 20 or the independent system 24 filters the consolidated item movement file 60 to process only the information relevant to promotionally active UPC codes. See page 43 of Appellants' specification.

Now referring to Figure 2E, the filtered POS movement file checks the data to ensure that the products qualify for the promotion. See page 45 of Appellants' specification. If the data passes these checks, the system proceeds to the settlement processing 238. See pages 46 and 47 of Appellants' specification. During the settlement processing, the system uses the terms of the promotion to calculate the amount of money due. Once the money has been determined, the independent system will

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facilitate settlement of the promotion by such options as electronic fund transfer payment.

Appellants' independent claims 1 and 33 are representative of the claimed invention and are reproduced as follows:

1. A method for an independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

capturing terms of the trade promotion at least including promoted product identification and payment term information for said trade promotion;

storing the captured terms of the trade promotion in an independent system operator database;

collecting from the retailer product POS data from at least one in-store POS system of the retailer;

filtering the product POS data using the promoted product identification stored in the independent system operator database to obtain promoted product POS data;

processing the promoted product POS data in accordance with the stored payment term information of the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

33. A method for enabling a retailer and a manufacturer involved in a plurality of trade promotions for a plurality of products to independently verify the terms of the trade promotions, said method comprising the steps of:

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Application No. 09/385,489

capturing the terms of the trade promotions at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer;

storing the captured terms of the trade promotions in an electronic database of the independent system; and

enabling the retailer and the manufacturer to access the electronic database of the independent system to determine the stored terms of the trade promotions.

Reference

The reference relied on by the Examiner is as follows:

Jones	5,832,458	Nov. 3, 1998
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Rejection at Issue

Claims 1-17, 19-62, 64-82 and 84-94 stand rejected under 35 U.S.C. § 102 as being anticipated by Jones.

Claims 18, 63 and 83 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jones.

Throughout our opinion, we make reference to the briefs¹ and answer for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellants

¹ Appellants filed an appeal brief on December 9, 2002. Appellants filed a reply brief on March 13, 2003. The Examiner mailed out an Office communication on April 8, 2003, stating the reply brief has been entered into the record.

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and Examiner, for the reasons state *infra*, we affirm the Examiner's rejection of claims 33-36 under 35 U.S.C. § 102. Furthermore, we reverse the Examiner's rejection of claims 1-17, 19-32, 37-62, 64-82 and 84-94 under 35 U.S.C. § 102. Furthermore, we reverse the Examiner's rejection of claims 18, 63 and 83 under 35 U.S.C. § 103.

Rejection of Claims 33 through 36

At the outset, we note that Appellants state on page 10 of the brief that each of independent claims are argued separate and apart. Furthermore, we note that independent claim 33 is argued separately but dependent claims 34 through 36 are not. See pages 26 and 27 of the brief and the reply brief. 37 CFR § 1.192 (c)(7) (July 1, 2000) ***as amended at*** 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of Appellants filing the brief, states:

For each ground of rejection which [A]ppellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

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Application No. 09/385,489

We will, thereby, consider the Appellants' claims 33 through 36 as standing or falling together and we will treat claim 33 as a representative claim of that group. **See also *In re McDaniel***, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) ("If the brief fails to meet either requirement [of 37 CFR § 1.192 (c)(7)], the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.") **See also, *In re Watts***, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

Appellants' argue that claim 33 includes capturing the terms of the contract and storing the terms of the contract elements. Appellants submit that at least for the reasons relating to claims 1 and 23, the Examiner's rejection of independent claim 33 should be reversed. See page 26 of Appellants' brief. Appellants argue for claims 1 and 23 that Jones does not expressly or implicitly mention capturing and/or storing the terms of the contract of the trade promotion agreed upon between the manufacturer and the retailer. See pages 14 and 18, 19 of Appellants' brief.

As our reviewing court states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." **Texas Digital Sys., Inc. v. Telegenix, Inc.**, 308 F.2d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

"Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." **Texas Digital Sys.**, 308 F.3d at 1204, 64 USPQ2d at 1819. ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty."); *Id.* (citing **Liebscher v. Boothroyd**, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958). ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit

Appeal No. 2004-0199
Application No. 09/385,489

definition of the term different from its ordinary meaning."

Texas Digital Sys., 308 F.3d at 1204, 64 USPQ2d at 1819.

"Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." ***Id.***

We note that Appellants' claim 33 recites

capturing the terms of the trade promotion at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer;

storing the captured terms of the trade promotions in an electronic database of the independent system.

Upon our review of Appellants' specification, we fail to find any specific definition to the term "payment term information." We do note that on page 12 of Appellants' specification, the specification states "payment information includes all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and the related payment information." However, we fail to find a definition for "payment term information" as recited in Appellants' claims. Clearly, Appellants have chosen to use different language in the claim.

We find that Appellants' use of "payment term information" is properly construed to mean a sub-set of payment information since the use of the word term is used. Therefore, we find that the term "payment term information" is any information but not all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and related payment information. Thus, information of sales volume can be properly construed to be "payment term information" since sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion.

We find that Jones teaches a system and method that electronically audits and tracks the results of the retailer's efforts while monitoring and recording all POS transactions. Each transaction record empirically establishes what is the incremental sales volume increase of a particular product promoted to support the trade promotion settlement process. See column 12, lines 14-20. Therefore, we find that Jones teaches "capturing the terms of the trade promotion at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer in storing the captured terms of

the traded promotion in the electronic database of the independent system."

Appellants also argue that Jones does not disclose "enabling the retailer and manufacturer to access the electronic database of the independent system to determine the stored terms of the trade promotions." See pages 26 and 27 of Appellants' brief.

As pointed out above, we have found that Jones does teach capturing and storing terms of the trade promotion in an electronic database of the independent system. Jones further teaches that the electronic database of the stored terms of the trade promotion are retained in a history file for a predetermined period, perhaps 52 weeks. See Jones, column 12, lines 14-16. Jones further teaches that predetermined and customized reports of the file is sent to both the retailer and the manufacturer. See Jones, column 12, lines 20-25. Thus, by retaining the files for 52 weeks and providing reports of the files, Jones teaches a method of enabling the retailer and the manufacturer to access the electronic database file to determine the stored terms of the trade promotions. Therefore, we find that Jones teaches all the limitations as recited in Appellants's claim 33. Therefore, we will sustain the Examiner's rejection of claims 33-36 under 35 U.S.C. § 102.

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Rejection of claim 84 under 35 U.S.C. § 102

Appellants argue that Jones fails to teach "capturing the terms of the trade promotions for the promoted products in an independent system which operates independently of the control of the retailer and the manufacturer, including retailer identification, manufacturer identification, trade promotion type, UPC Codes for the promoted products, payment values for the promoted products, and link codes for associated discounts if any of the trade promotions are electronic discount trade promotions." Appellants argue that the Examiner has not explained how and why capturing of these more specific terms in claim 84 is expressly or inherently present in Jones. See pages 33 and 34 of Appellants' brief.

Upon our review of Jones, we fail to find that Jones teaches capturing the terms of the trade promotion including link codes for associate discounts if any of the trade promotions are electronically discount trade promotions. Therefore, we will not sustain the Examiner's rejection of claim 84 as well as dependent claims 85-87 under 35 U.S.C. § 102.

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Application No. 09/385,489

***Rejection of Independent claims 1, 23, 37, 47, 68, 74, 77, 88, 89
and 90 under 35 U.S.C. § 102***

Appellants argue that Jones does not disclose a method or system for an independent system operator to process the promoted product POS data in accordance with stored payment term information of the trade promotion in the independent system operator database to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufactures payment of the amount of money owed to the trade retailer to the trade promotion. See pages 21-25, 27-32, 34 and 35 of the brief.

Upon our review of Jones, we agree that Jones teaches a system or method for an independent system operator of capturing terms of the trade promotion at least including promoted product identification and sales volume for the trade promotion and storing these captured terms. However, we fail to find that Jones teaches the independent system operator to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufactures payment and the amount of money owed. Jones clearly teaches that the reports provided are sent to the manufacturer to support the settlement process. However, Jones does not teach that the independent

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Application No. 09/385,489

system operator performs this settlement. Therefore, we fail to find that Jones teaches all the limitations as recited in Appellants' claims 1, 23, 30, 37, 68, 74, 77, 88, 89 and 90. Therefore, we will not sustain the Examiner's rejection of these claims under 35 U.S.C. § 102.

Rejection of Dependent claims 1, 23, 30, 37, 47, 68, 74, 77, 88, 89 and 90

For these claims, we note that the Examiner has rejected these dependent claims under 35 U.S.C. § 102 as being anticipated by Jones or under 35 U.S.C. § 103 as being unpatentable over Jones. We note that these claims recite the above limitation due to their dependencies on their respective independent claims. Therefore, we will not sustain the Examiner's rejection of these claims for the same reasons as above.


Conclusion

In view of the foregoing, we have sustained the Examiner's rejection of claims 33-36 under 35 U.S.C. § 102. However, we have not sustained the Examiner's rejection of claims 1-17, 19-32, 37-62, 64-82 and 84-94 under 35 U.S.C. § 102. Finally, we have not sustained the Examiner's rejection of claims 18, 63 and 83 under 35 U.S.C. § 103.

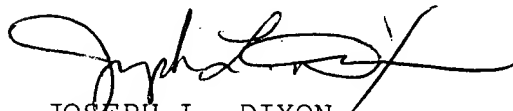
Appeal No. 2004-0199
Application No. 09/385,489

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART


ERROL A. KRASS
Administrative Patent Judge)
)
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)


MICHAEL R. FLEMING
Administrative Patent Judge)
)
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JOSEPH L. DIXON
Administrative Patent Judge)
)
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Appeal No. 2004-0199
Application No. 09/385,489

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